**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2018] SGHCR 15**

Suit No 94 of 2018 (Summons No 3510 of 2018)

Between

I-Lab Engineering Pte Ltd

… *Applicant*

And

Shriro (Singapore) Pte Ltd

… *Respondent*

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# JUDGMENT

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[Building and construction law] – [Suspension of performance] – [Right to recover loss or expenses]

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# Shriro (Singapore) Pte Ltd

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20, 21, 25 September, 9 October 2018; 19 October 2018

7 November 2018 Judgment reserved.

**Elton Tan Xue Yang AR:**

## Introduction

1 The right to suspend the carrying out of construction work under s 26(1) of the Building and Construction Industry Security of Payment Act (Cap 30B, 2006 Rev Ed) ("the Act") is a powerful coercive measure available to a contractor who faces difficulties in extracting payment from its employer even after an adjudication determination has been rendered in its favour. While a contractor can enforce an adjudication determination as a judgment debt against an employer pursuant to s 27(1) of the Act, its exercise of the right to suspend has implications that are immediate and impossible for its recalcitrant paymaster to ignore. The suspension inevitably impacts the progress of the construction project and exposes the employer to consequential liabilities for delays: see 26(2)(*b*) of the Act. By discouraging non-payment or late payment of adjudicated amounts, the right to suspend strengthens the statutory adjudication

scheme and serves as a compelling reminder to employers that it is better to pay now and argue later.

2 The right to recover loss or expenses incurred by the contractor as a result of the removal by the employer of any part of the work from the contract during the period of suspension under s 26(3) of the Act is ancillary to the right to suspend works. It is part of a broader allocation of rights and liabilities within s 26 that supports the right to suspend works but which ensures, at the same time, that the boundaries of that right are suitably circumscribed. The application before me is to strike out a counterclaim by a sub-contractor for recovery of such loss or expenses. The central question in the application concerns the meaning of "loss or expenses" within s 26(3); specifically, whether in the context of the statute it entitles a sub-contractor to claim the full contract price for the works removed, or if it only permits damages for the usual measure of loss. Neither this issue nor the necessary background of the right to suspend works under s 26(1) appears to have been the subject of prior consideration, and I therefore examine these matters within these written grounds.

## Facts

### *The Project*

3 The Plaintiff, I-Lab Engineering Private Limited, is a sub-contractor of the project titled "Proposed Development of an Integrated Regional Hospital, a Community Hospital and Specialist Outpatient Clinics comprising of 2 Basement & 2 Basement Mezzanine, 1 no. of 4 Storey Podium, 2 nos. of 10 Storey General Hospital Block, 1 no. of 10 Storey Community Hospital and 1 no. of 10-Storey Specialist Outpatient Clinics on Lot 02019N PT & 02466A PT MK21 at Sengkang East Way / Sengkang East Road / Anchorvale Street (Sengkang Planning Area)" ("the Project").[1]

4 The Defendant, Shriro (Singapore) Pte Ltd, is the Plaintiff's sub-contractor for air-conditioning and mechanical ventilation ("ACMV") and electrical installation works in the Project ("the Sub-Contract Works").[2] The parties' contractual relationship commenced when the Plaintiff issued a letter of award to the Defendant on 30 September 2015, regarding the supply, delivery, installation, testing and commissioning, maintenance and warranty of the ACMV and electrical installation works for operation theatres, procedure rooms and integrated mechanical and electrical systems for the Project ("the Sub-Contract").[3] The Sub-Contract provided for lump sum payment of $10,650,000 to the Defendant, with an option for a further agreement to provide maintenance services for an additional lump sum of $1,330,000. The Defendant signed the letter of award a day after its issuance.[4]

***Delays in the Sub-Contract Works***

5 According to the Plaintiff, the Defendant suffered from significant cash flow problems from the outset of the Project and therefore could not pay for the costs of carrying out the Sub-Contract Works in a manner that allowed those works to proceed on time. The Plaintiff alleges that the Defendant's financial problems were so serious that it had repeatedly asked the Plaintiff for assistance to enable it to continue with the Sub-Contract Works.[5] To that end, the Plaintiff had agreed, amongst other things, to help the Defendant procure workers and suppliers and to make the necessary payment on behalf of the Defendant, which

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1 Statement of Claim (Amendment No. 1) at para 1.

2 Statement of Claim (Amendment No. 1) at para 2.

3 Statement of Claim (Amendment No. 1) at para 7.

4 Statement of Claim (Amendment No. 1) at para 7.

5 Statement of Claim (Amendment No. 1) at paras 11 and 12.

would subsequently reimburse the Plaintiff by way of back-charges or set-offs against amounts due to the Defendant under the monthly progress payments.[6]

6 The Defendant entirely denies that its alleged cash flow problems affected the progress of the Sub-Contract Works. It was in fact at all material times capable of undertaking and completing the Sub-Contract Works in a timely manner.[7] According to the Defendant, the blame in fact lies at the door of the Plaintiff. It was the delays on site caused by the Plaintiff and/or its sub-contractors that impeded the progress of the Sub-Contract Works.[8] In its pleadings, the Defendant identifies numerous alleged clashes between the works of various sub-contractors and the Sub-Contract Works that resulted in the Defendant's inability to complete its works on time.[9] The cost of any additional workers that had to be supplied in order to accelerate the Sub-Contract Works, so the Defendant argues, should therefore be borne by the Plaintiff.[10]

***The adjudication***

7 On 10 October 2017, the Defendant lodged an adjudication application against the Plaintiff for the amount claimed in the Defendant's Payment Claim No. 19. It is not disputed that the Plaintiff did not serve a valid payment response and it was therefore precluded under s 15(3) of the Act from providing reasons for withholding payment in its adjudication response.[11]

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6 Statement of Claim (Amendment No. 1) at para 36.

7 Defence & Counterclaim (Amendment No. 2) at para 7.

8 Defence & Counterclaim (Amendment No. 2) at para 8(r).

9 Defence & Counterclaim (Amendment No. 2) at paras 8(s) and (t).

10 Defence & Counterclaim (Amendment No. 2) at para 8(v).

11 Affidavit of Bernard Mao Chuo Wang dated 31 July 2018 ("Mao's affidavit") at para 10; affidavit of Ang Tiong Beng dated 21 August 2018 ("Ang's affidavit") at para 21.

8 In an adjudication determination dated 13 November 2017 ("the Adjudication Determination"), the adjudicator directed the Plaintiff to pay the Defendant the sum of $2,467,343.54 (including GST) ("the Adjudicated Sum").[12] Thereafter, the Plaintiff attempted unsuccessfully to set aside the Adjudication Determination.[13]

***Works carried out during suspension***

9 From 28 December 2017 to 12 February 2018 ("the Suspension Period"), the Defendant suspended its works pending payment of the Adjudicated Sum, in purported reliance on s 26 of the Act.[14]

10 According to the Defendant, during the Suspension Period, the Plaintiff proceeded to carry out various works falling within the scope of the Sub-Contract Works, namely, (a) testing and commissioning works for 30 air handling units ("the AHUs") ("the AHU Works"); (b) third party testing and commissioning works for "Level 2, Pods 1 to 3" and "Level 3, Pod 1 and Pod 6" ("the Third Party Testing and Commissioning Works"); and (c) physical works for installation of fan coil units at level 4, installation of "additional F11 for dark spots at Level 4" and replacement of "faulty and missing VSD at Level 4" ("the Physical Works").[15]

11 The Plaintiff does not deny that it carried out the Third Party Testing and Commissioning Works and the Physical Works (save that it contends that the replacement of "faulty and missing VSD at Level 4" does not form part of

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12 Mao's affidavit at para 22; Ang's affidavit at para 16.

13 Mao's affidavit at para 27.

14 Defence & Counterclaim (Amendment No. 2) at para 8(s) item 35.

15 Defence & Counterclaim (Amendment No. 2) at para 97 item 3.

the Sub-Contract Works). In respect of the AHU Works, the Plaintiff's position is that it did not carry out performance tests for three specified AHUs and "did not carry out nor omit" the testing and commissioning works for the electrical and the building management systems works for the AHUs.[16]

12 For convenience – and making no finding with respect to the exact nature of the works carried out by the Plaintiff during the Suspension Period – I will refer to the works allegedly taken out of the scope of the Sub-Contract Works by the Plaintiff during the Suspension Period as "the Omitted Works".

***Proceedings***

*Commencement of the Suit*

13 On 30 January 2018, the Plaintiff commenced Suit No 94 of 2018 ("the Suit") against the Defendant. The claims brought by the Plaintiff are numerous and the total claimed amount is $6,396,612.81 as well as damages to be assessed for loss incurred by the Plaintiff as a result of the delays in the completion of the Sub-Contract Works. By the Plaintiff's calculation, the delays amount to "169 days as at 27 March 2018 (and running)".[17]

14 For present purposes, it suffices to note that one of the Plaintiff's claims concerns the works that it carried out during the Suspension Period. The Plaintiff alleges that the "direct result" of the Defendant's suspension of works was that it "had to incur costs and expense to carry out those portions of the Sub-Contract Works which the Defendant was supposed to carry out during the Suspension Period but did not". It seeks a declaration that the Omitted Works

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16 Reply & Defence to Counterclaim (Amendment No. 1) at para 33.

17 Statement of Claim (Amendment No. 1) at para 154.

are therefore properly removed from the scope of the Sub-Contract Works and thus the Defendant is "not entitled to claim any sums from the Plaintiff in connection with the [Omitted Works]".[18]

*Counterclaim for Omitted Works*

15 The Defendant denies the Plaintiff's entitlement to a declaration regarding the Omitted Works.[19] It has in turn filed a counterclaim against the Plaintiff, one aspect of which concerns the Omitted Works. The Defendant alleges that the Plaintiff was not permitted to remove the Omitted Works from the Defendant's scope of works under the Sub-Contract, and that by so doing the Defendant was "prevented by the Plaintiff from completing its obligations under the Sub-Contract". The Defendant claims "losses, expenses and/or damages" arising from the Plaintiff's actions in this regard, relying on s 26(3) of the Act as the statutory basis for the claim.[20] Crucially, the Defendant "avers that the Plaintiff is not entitled to omit the [Omitted Works] and the Defendant … is entitled to the *full contract sum*" [emphasis added].[21] I shall refer to this aspect of the Defendant's counterclaim as the "Counterclaim for Omitted Works".

16 In reply, the Plaintiff asserts that the Defendant is "not entitled to be paid for works which it did not carry out".[22]

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18 Statement of Claim (Amendment No. 1) at para 132.

19 Defence & Counterclaim (Amendment No. 2) at para 79.

20 Defence & Counterclaim (Amendment No. 2) at para 97.

21 Defence & Counterclaim (Amendment No. 2) at para 98.

22 Reply & Defence to Counterclaim (Amendment No. 1) at para 34.

*The Striking Out Application*

17 On 31 July 2018, the Plaintiff filed Summons No 3510 of 2018 ("the Striking Out Application"), seeking to strike out 12 paragraphs of the Counterclaim. Two of those paragraphs (*ie,* paras 97 and 98 of the Defence and Counterclaim (Amendment No. 2)) pertain to the Counterclaim for Omitted Works.

18 I heard the parties on 20, 21 and 25 September 2018. On 9 October 2018, I delivered my decision on the Striking Out Application save in respect of the Plaintiff's attempt to strike out the Counterclaim for Omitted Works, in relation to which I directed parties to tender further written submissions. I will now briefly describe the arguments put before me on whether the Counterclaim for Omitted Works ought to be struck out. It suffices for me to provide an outline at this juncture and I will further describe the parties' submissions in the subsequent analysis as appropriate.

**Parties' submissions**

19 The Plaintiff's complaint regarding the Counterclaim for Omitted Works is straightforward – it is that s 26(3) of the Act does not "give credence" to the Defendant's position that it is entitled to "be paid for work which it did not carry out". The provision "clearly does not give any basis for the Defendant to claim the full contract price for each item of the work which it did not carry out and which was carried out by the Plaintiff" [underline in original]. The Plaintiff further submits that "[a]s the Defendant chose not to and did not in fact carry out the [Omitted Works], it incurred no cost and suffered no loss in respect of works it did not carry out".[23] On this basis, the Plaintiff argues that the

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[23] Plaintiff's written submissions (17 September 2018) at paras 184 and 185.

Counterclaim for Omitted Works as pleaded "does not disclose any cause of action".[24]

20 The Defendant contends that it is "entitled to the full contract sum" because s 26(3) of the Act permits it to claim "losses, expenses and/or damages arising from the removal of the Defendant from the [Sub-Contract] or any part of the [Sub-Contract Works] during the [Suspension Period]".[25]

21 During the course of the hearing, it became clear that the parties differed on their understanding of what a party was entitled to claim under s 26(3) of the Act; specifically, whether the Defendant was entitled to claim the "full contract sum" in respect of the Omitted Works as "loss of expenses" within the meaning of s 26(3) of the Act. The further written submissions tendered by the parties were therefore directed toward this issue, which the parties agreed had not previously been the subject of judicial determination in Singapore. In my judgment, it is necessary to begin with an overview of the regime under s 26 as necessary background for examining the scope of the right under s 26(3).

**The right to suspend work**

22 The right to suspend the carrying out of construction work or the supply of goods and services under a construction contract arose, as a matter of conception, from the recommendation of Sir Michael Latham in his report *Constructing the Team: Final Report of the Government/Industry Review of Procurement and Contractual Arrangements in the UK Construction Industry* (HMSO, 1994) ("the Latham Report"). The Latham Report was commissioned pursuant to the Joint Review of Procurement and Contractual Arrangements in

[24] Plaintiff's written submissions (17 September 2018) at para 182.

[25] Defendant's written submissions (19 September 2018) at para 87.

the UK Construction Industry in order to resolve problems faced by the construction industry. It has been described as the product of a "heroic effort" by Sir Michael Latham (see United Kingdom, House of Lords, *Parliamentary Debates* (20 February 1996) vol 569 at col 1005 (Viscount Ullswater)) which has since culminated in the enactment of the Housing Grants, Construction and Regeneration Act 1996 (c. 53) ("the UK Act"). The Latham Report and the UK Act have inspired the creation of similar legislative schemes in other jurisdictions, including ours, but with adaptations to cater to domestic policies on the construction industry. As will be explained, this has extended to variations on the scope and extent of the right to suspend works, which is a crucial component of all these legislative schemes.

### *Operation of the right*

23 Section 26(1) of the Act provides:

> **Right to suspend work or supply**
>
> **26.–** (1) Subject to the provisions of this Act, a claimant may suspend the carrying out of construction work, or the supply of goods or services, under a contract if, and only if –
>
> (*a*) the claimant has served on the respondent the notice referred to in section 23(1)(*b*);
>
> (*b*) a copy of the notice has been served by the claimant on the principal (if known) and the owner concerned;
>
> (*c*) 7 days have elapsed since the notice was served on the respondent, the principal (if known) and the owner, or since the last of them was served the notice; and
>
> (*d*) the claimant has not been paid the adjudicated amount.

24 By way of explanation, s 23(1)(*b*) of the Act establishes that where a respondent in an adjudication has failed to pay the whole or any part of the adjudicated amount to the successful claimant within the time stipulated, the claimant may serve on the respondent a notice in writing of the claimant's

intention to suspend its carrying out of the works. That is one precondition to the right to suspend work under s 26(1). Once that notice has been served on the respondent and a copy thereof has been served on the principal (if known) and the owner, the claimant is permitted to suspend work after the passage of seven days and in the continued absence of payment of the adjudicated amount by the respondent.

***Rationale for the right***

25 On 16 November 2004, at the Second Reading of the Building and Construction Industry Security of Payment Bill (Bill 54 of 2004) ("the Bill"), then-Minister of State for National Development Mr Cedric Foo Chee Keng ("the Minister") explained the circumstances in which the Bill had been designed and why it urgently required Parliament's attention (see *Singapore Parliamentary Debates, Official Report* (16 November 2004) vol 78 ("*Singapore Parliamentary Debates*") at col 1112). The construction industry at the time was facing a serious downturn with a substantial decrease in demand for works. The problem was exacerbated by an increase in the number of contractors entering the market. The result of this unfortunate confluence of circumstances was an increasing struggle by construction firms to stay afloat, with sub-contractors and suppliers suffering the trickle-down effects of delayed payment for work done and materials supplied. The Minister observed that the failure to make prompt payment was essentially crippling these downstream entities. He placed especial emphasis on one particular constraining factor (see *Singapore Parliamentary Debates* at col 1113): "The parties who have not been paid for work done are also *not permitted to suspend works*. In some instances, they are also required to pay liquidated damages if they suspend work." [emphasis added]

26 The measures in the Bill were therefore introduced as a form of life support for these sub-contractors and suppliers by facilitating a continued flow of progress payments. The Minister further explained (see *Singapore Parliamentary Debates* at cols 1113 and 1117):

> The [Security of Payments] Bill will preserve the rights to payment for work done and goods supplied of all the parties in the construction industry. It also facilitates cash flow by establishing a fast and low cost adjudication system to resolve payment disputes. *Affected parties will have the* ***right to suspend work*** *or withhold the supply of goods and services, if the adjudicated amount is not paid in full or not paid at all.*
>
> …
>
> Sir, to expedite cashflow, the respondent has up to seven days after the adjudicator's decision to pay the claimant the adjudicated amount. Otherwise, the claimant can suspend work or stop supply. A supplier may also exercise a lien on unfixed goods supplied under the contract, if the goods have not been paid. In addition, the claimant can file the adjudicated amount as a judgment debt in court.
>
> [emphasis added in italics and bold italics]

27 Similar statutory rights to suspend works have been enacted in other jurisdictions which possess legislative schemes for adjudication of construction disputes. The contours of these statutory rights differ according to each jurisdiction's favoured philosophy regarding the extent to which suspension as a self-help remedy ought to be made available to ailing contractors and suppliers. I suggest that in the context of the Act, the right to suspend works strengthens the adjudication regime in three principal ways:

(a) First, it represents a necessary but controlled departure from the position on suspension of works at common law which, if retained, would cause the statutory adjudication scheme to lose much of its effectiveness.

(b) Second, if exercised, it has the potential to act as a powerful source of pressure on respondents to make prompt payment of adjudicated amounts, therefore aiding the enforcement of adjudication determinations.

(c) Third, it encourages conformity with other requirements of the statutory scheme, giving teeth to the statutory scheme as a whole.

*Departure from the position at common law*

28 Legally speaking, the significance of enacting a statutory right to suspend work lies in the major departure from the position at common law that such a right represents. The Minister alluded to the prevailing state of the law when he mentioned that prior to the Bill, sub-contractors who had not been paid for work done were not permitted to suspend work, and that if they did so they might be liable to pay liquidated damages (see [25] above).

29 Mere months before Parliament convened to consider the Bill, V K Rajah JC (as he then was) observed in *Jia Min Building Construction Pte Ltd v Ann Lee Pte Ltd* [2004] 3 SLR(R) 288 ("*Jia Min*") at [55] that it is "settled law that a contractor/sub-contractor has no general right at common law to suspend work unless this is expressly agreed upon. This is so even if payment is wrongly withheld". The general lack of entitlement of a contractor to suspend work pending payment also has to be seen in light of the fact – as Rajah JC observed in an earlier part of his judgment – that delay *per se* in making progress payments under a construction contract will not ordinarily amount to repudiation, allowing the contractor to stop works. Absent specific contractual terms in this regard, "the failure by an employer or a contractor to make payments in accordance with the contract will not usually exonerate the contractor or sub-contractor from its obligations to proceed with its work" – it

is only in circumstances where failure to pay is "grave enough to amount to a repudiation" that the innocent party will have the option whether to accept the repudiation and terminate the contract or to affirm the contract by proceeding with it: *Jia Min* at [45]. The corollary is that a contractor may find itself in a distinctly unenviable situation, where it is compelled to continue works although cash flow from the employer or main contractor is not immediately forthcoming. As observed in Chow Kok Fong, *Security of Payments and Construction Adjudication* (LexisNexis, 2nd Ed, 2013) ("*Chow Kok Fong*") at paras 18.54 and 18.55, "in practice, this may effectively require the aggrieved contractor to put up with the employer's payment defaults over a fairly long period before the default could be construed as amounting to repudiation. … [In addition] the case for repudiation cannot always be made with confidence and the other party may be expected to counterclaim for wrongful abandonment of the works."

30 It is easy to see that if the position at common law were preserved, the utility of having an adjudication determination in one's favour would be severely diminished. A contractor would be compelled to continue its works for a main contractor or employer that has persistently refused to make progress payments, even after the adjudicator has found that such non-payment was unjustified. The result would be the continued depletion of the contractor's funds. It was therefore necessary to create a right to suspend works, which would enable the contractor to immediately stem the outflow of funds and hence preserve its financial position. Accordingly, this departure from the position under the common law was essential to achieve Parliament's aim of alleviating the difficulties faced by downstream entities.

*Creating pressure on respondents to pay up*

31 Section 26(2) of the Act provides:

> (2) During the period of suspension exercised in accordance with subsection (1) –
>
> > (*a*) the claimant is not liable to the respondent, the principal or the owner for any loss or damage suffered by the respondent, the principal or the owner, respectively, or by any person claiming through or under the respondent, the principal or the owner; and
> >
> > (*b*) the respondent, the principal and the owner shall have no claim against the claimant for any loss or damage suffered as a result of the suspension, but the principal and the owner may recover liquidated damages or any other remedy from the respondent pursuant to any contract or under any law.

32 Put shortly, s 26(2) renders a claimant sub-contractor immune from claims by the main contractor, principal or owner that might otherwise be brought against it for its decision to suspend works, but opens the respondent main contractor to potential claims from the principal or owner. The statutory arrangements therefore introduce what has been described as a "double whammy" for main contractors who default in payment of adjudicated sums – they "continue to remain exposed for claims for liquidated damages or damages in common law for delay but cannot foist or shift any of the same on the sub-contractor or supplier who suspends work under the Act": WongPartnership, *Annotated Guide to the Building and Construction Industry Security of Payment Act 2004* (Sweet & Maxwell Asia, 2004) at p149. The "liability for the disruption caused to the project by the suspension is thus laid squarely on the respondent on account of his failure to pay the adjudicated amount": *Chow Kok Fong* at para 18.74.

33 In a sense, the reference in s 26(2)(*b*) to the ability of the principal and the owner to "recover liquidated damages or any other remedy from the

respondent *pursuant to any contract or under any law*" is not so much an attempt to create a new source of liability for main contractors (it does not) as much as it is a clarification that existing avenues of recourse by principals and owners against main contractors are preserved. But it is evident in any case that Parliament's intention in so wording the section was two-fold: first, to draw a clear distinction between the risk exposures of sub-contractors and main contractors upon the exercise of the right to suspend; and second, to issue a warning to the latter group that they would have little to gain and potentially much to lose from failing to pay adjudicated sums promptly.

*Encouraging conformity with the statutory regime*

34 The right to suspend work for non-payment of the adjudicated amount, coupled with the exposure to potential liability under s 26(2)(*b*), creates a powerful disincentive for main contractors and employers not only from refusing to make payment of adjudicated sums, but also from refraining to participate in the process outlined in the Act. This is for the simple reason that a main contractor who refuses, for instance, to provide payment responses under s 11(1) of the Act, to include reasons for withholding payment in its payment response under s 11(3), or to submit adjudication responses under s 15(1) may find itself at the losing end of an adjudication determination, and accordingly suffer the risk of the sub-contractor suspending works. That would in turn expose the main contractor to possible claims by the principal and owner for delays in completion.

35 Accordingly, the potency of the right to suspend works encourages full and proper participation by main contractors in the statutory scheme, including the process of adjudication. Employers and main contractors may see more benefit in properly defending themselves before the adjudicator and avoiding a

loss in the adjudication altogether, rather than ignoring the sub-contractor's recourse to the statutory mechanism and thereafter enduring the threat of suspension as well as the need to make payment of the adjudicated sum to the sub-contractor and the trouble of commencing litigation or arbitration to recover that sum.

## The right to recover loss or expenses resulting from the removal of works during suspension

### *Operation of the right*

36 I now turn to the right under s 26(3) of the Act to recover loss or expenses incurred by a contractor during the period of suspension following the removal by the main contractor of part of the sub-contract works. That is a subsidiary right that must be understood in light of the justification for the primary right to suspend works in s 26(1), as described above.

37 Section 26(3) of the Act provides as follows:

> (3) If the claimant, in exercising the right to suspend the carrying out of construction work or the supply of goods or services in accordance with subsection (1), incurs any loss or expenses as a result of the removal by the respondent from the contract of any part of the work or supply –
>
> > (*a*) the respondent is liable to pay the claimant the amount of any such loss or expenses; and
> >
> > (*b*) any such loss or expenses may be recovered by the claimant as a debt due from the respondent.

38 Together, sections 26(2) (as described at [31]–[33] above) and (3) contain an intricate allocation of parallel rights, defences and liabilities that support the primary right in s 26(1). As described earlier, s 26(2) essentially inoculates a sub-contractor who has succeeded in the adjudication from liability: s 26(2)(*a*) specifically negates the existence of such liability, and s 26(2)(*b*)

negates the bringing of a claim against it while explicitly earmarking the main contractor as a potential target for claims by the principal and the owner. Alongside the statutory *defence* for the sub-contractor in s 26(2), s 26(3)(*a*) additionally grants the sub-contractor a statutory *right*, namely, to recover loss or expenses that the sub-contractor incurs as a result of the main contractor removing any part of the work or supply from the scope of the sub-contract. Section 26(3)(*b*) goes further to specify the means by which this right may be enforced. The sub-contractor may recover such loss or expenses as a debt due from the main contractor.

***Rationale for the right***

39 From one point of view – much like the recognition of the continued enforceability of the principal's and owner's rights against the respondent in s 26(2)(*b*) – the right to recover loss or expenses following the removal of works from the sub-contract (which is sometimes referred to as "omitting" or "descoping" works from the sub-contract) in s 26(3) is simply a codification of the existing legal position. The reason is that there is no general right to omit works from a construction contract. Such omission is only permitted pursuant to a contractual power to vary works, and that power to vary works by way of omission is itself hedged about by constraints under the common law. As observed in Chow Kok Fong, *Law and Practice of Construction Contracts* vol 1 (Sweet & Maxwell, 4th Ed, 2012) ("*Construction Contracts*") at para 5.108, the power to omit work from a contract must be "exercised *bona fide*, for the purpose of the works, either because the omitted part of the work is found to be no longer required or has to be substituted. … [I]n the absence of clearly drafted express provisions to the contrary, a power to omit work cannot be exercised where the purpose is to arrange for the work omitted from the contract to be

undertaken by another contractor at a lower price or to prevent the contractor from carrying out the work under the original terms of the contract."

40 In the context of the Act, however, the right to recover loss or expenses for omission of works takes on particular significance because, as a subsidiary right, its purpose and function is inherently tied to that of the right to suspend works under s 26(1). This can be seen from the fact that the s 26(3) right can only be exercised in relation to works removed during the period of suspension initiated by the sub-contractor pursuant to s 26(1). The s 26(3) right therefore serves to ensure that the exercise of the s 26(1) right remains meaningful. While a sub-contractor faced with the removal of sub-contract works during the period of suspension may plausibly allege that based on the common law, the omission of the works already constitutes an invalid exercise of the main contractor's contractual power to vary the sub-contract, "by stating explicitly [in s 26(3)] that the [sub-contractor] is entitled to be compensated for any loss or expense incurred, the [sub-contractor] is afforded a more direct course of action against the [main contractor]": *Chow Kok Fong* at Chapter 18, p 875, footnote 64. But apart from the directness of the statutory remedy, I suggest the function of the right under s 26(3) can be explained in the following two ways.

41 First, if a main contractor were permitted to remove works from the scope of the sub-contract during the period of suspension without having to provide recompense, the sub-contractor's right to suspend works would lose much of its attractiveness. Faced with such a possibility, the sub-contractor would be wary of ever exercising the right to suspend, for fear that the main contractor might direct a third party to carry out the outstanding sub-contract works during that period or carry them out by itself, while refraining from making suitable payment to the sub-contractor. It would be entirely inconceivable if the main contractor were in a better position with regard to the

consequences of its removal of works from the scope of the sub-contract during the period of suspension under the Act than if it were to remove such works under normal circumstances, and s 26(3) puts it beyond doubt that no such advantage accrues to the main contractor.

42 Second, a main contractor that unilaterally removes works from the scope of the sub-contract without penalty would, in essence, be bypassing the suspension of works and thwarting the legislative intent behind the right to suspend. The main contractor would effectively be eliminating the sanction imposed on it for its non-payment of the adjudicated sum. *Chow Kok Fong* explains at para 18.76 that s 26(3) was "thus inserted in the Act to ensure that the [main contractor] does not circumvent the effect of s 26(1) by this route". Likewise, in the New South Wales Supreme Court decision of *Urban Traders Pty Ltd v Paul Michael Pty Ltd* [2009] NSWSC 1072 ("*Urban Traders*"), McDougall J observed, in relation to s 27(1) of the New South Wales Building and Construction Industry Security of Payment Act 1999 ("the NSW Act") – which is *in pari materia* to s 26(1) of our Act – as follows (at [77]):

> … The right to suspend work [under s 27(1) of the NSW Act] would *lose much of its efficacy if a proprietor could, with impunity and without cost, react to the suspension by withdrawing the work from the builder*. Thus, s 27(2A) [which is *in pari materia* to s 26(3) of our Act] gives the builder a right to recover losses or expenses incurred as a result of the removal of any work; and s 13(3)(a) means that those losses or expenses can be made the subject of a payment claim and, in the event of dispute, an adjudication application. [emphasis added]

***"Loss or expenses" within the meaning of s 26(3)***

43 I now turn to the central question in the Plaintiff's application to strike out the Counterclaim for Omitted Works. In my judgment, there are cogent and convincing reasons why the Defendant's allegation that the right to recover loss or expenses under s 26(3) of the Act extends, as a rule, to the "full contract sum"

(see [15] above) is insupportable. That interpretation of "loss or expenses" within the meaning of s 26(3) is neither consistent with statutory intention nor sound in principle.

*Inconsistency with general remedial principles*

44 To begin, if the Defendant were right, it would essentially be able to obtain payment for work that it had not done. Despite not having completed the Sub-Contract Works, it would be entitled to seek remuneration under the Sub-Contract for the Omitted Works. That is entirely inconsistent with normal remedial principles.

45 In *Parkview Constructions Pty Ltd v Sydney Civil Excavations Pte Ltd & anor* [2009] NSWSC 61, a decision of the New South Wales Supreme Court, the plaintiff project manager entered into a contract for excavation works to be carried out by the defendant. The defendant served a payment claim on the plaintiff, which responded with a payment schedule for a lesser amount. The defendant lodged an adjudication application and thereafter issued a notice of intention to suspend the works pursuant to s 16(2)(b) of the NSW Act, which allows a claimant to serve notice of its intention to suspend carrying out construction work where a respondent has failed to pay amounts indicated in its payment schedule. On the same day, the plaintiff acknowledged receipt of the notice to suspend and itself issued a notice purporting to terminate the contract. A first round of statutory adjudication occurred. Thereafter, the defendant served another payment claim on the plaintiff, including within the payment claim a claim for "Loss of Income". It later filed a second adjudication application, likewise claiming for "loss of income" that was "calculated by simply adding 20%, being the cost of overhead and margin applied to all projects, against the balance of the original works", allegedly suffered "as a

result of the termination of the works by the [plaintiff].” The adjudicator rejected the plaintiff’s contention that the defendant had not provided any evidence in support of its claim for loss of income in the amount of 20% of the contract price, and awarded a sum of $149,362.50 for loss of income under s 27(2A) of the NSW Act. Section 27(2A) of the NSW Act provides, similarly to s 26(3) of our Act, that if a claimant, in exercising the right to suspend the carrying out of construction work, “incurs any loss or expenses as a result of the removal by the respondent of any part of the work or supply, the respondent is liable to pay the claimant the amount of any such loss or expenses”. For completeness, it should be noted that the right to suspend under s 16(2)(b) of the NSW Act – *ie,* for failure to pay amounts indicated in a payment schedule – is distinct from the right to suspend following the respondent’s failure to pay an adjudicated amount, which exists under s 24(1)(b) of the NSW Act. There is no equivalent right to s 16(2)(b) of the NSW Act in our Act.

46 The plaintiff sought a declaration that the adjudication determination was void, arguing amongst other things that the adjudicator failed properly to determine the value of the s 27(2A) claim because he did not evaluate the defendant’s loss of income, and made no attempt to ascertain the actual profit that the defendant would have made. In rejecting this argument, Brereton J held at [36] as follows:

> A claim under s 27(2A) does not require valuation of the work done to permit quantification, but it does require assessment of the amount of the relevant loss and determination that it was incurred in the circumstances to which s 27(2A) refers. The Adjudicator plainly considered and determined, adversely to [the plaintiff], that the losses claimed by [the defendant] were incurred in exercising the right to suspend the carrying out of construction works, and ***as a result of the removal*** *by the [defendant] from the contract of part of the work*. … [emphasis added in italics and bold italics]

47 In *Paul Michael Pty Ltd (subject to deed of company arrangement) v Urban Traders Pty Ltd* [2010] NSWSC 1246 ("*Paul Michael*") (which, for avoidance of doubt, is a different decision from *Urban Traders* mentioned at [42] above), the defendant owners entered into a contract with the plaintiff builder. Following an adjudication, the defendants were held to be liable to pay $357,925.59 to the plaintiff. The plaintiff then gave notice to the defendants under s 24(1) of the NSW Act that it would suspend the carrying out of construction under s 27 of the NSW Act within two business days as it had not received payment of the adjudicated amount. When the plaintiff still did not receive payment, it proceeded to suspend construction works. Subsequently, the defendants gave notice to the plaintiff, purportedly pursuant to cl 39.4 of the contract, that they would take the whole of the work remaining to be completed on the project out of the plaintiff's hands, and further gave notice that they would be suspending payment. Upon further adjudication, the adjudicator found that the defendants did not have a contractual right to omit the works and that the plaintiff was entitled to $123,156.55 as loss and expenses incurred in exercising its right to suspend work. When the plaintiff later became subject to a deed of company arrangement, the defendants lodged a proof of debt with the debt administrator, claiming that the plaintiff was indebted for various sums described as damages for breach of the contract and restitution of overpayment of monies.

48 In the New South Wales Supreme Court, one of the arguments the plaintiff made was that if it were liable for any of the amounts claimed by the defendants in their proof of debt, it would be entitled under s 27(2A) of the NSW Act to recover from the defendants any amount that it was liable to pay the defendants, as a loss or expense that was the result of the removal by the defendants from the contract of the work. White J had no hesitation in rejecting

this submission. A point of emphasis in White J's judgment was the requirement that there be a connection between the loss or expenses claimed and the removal of the works from the contract:

> 47 I do not accept that submission. First, some of the losses claimed in the proof of debt would not be, or would not necessarily be, ***the result of the removal*** *by the defendants of the work from the plaintiff*. For example, claims for additional financing expenses resulting from delays allegedly due to prior breaches by the plaintiff would not be the result of the removal by the defendants of the work from the plaintiff. More fundamentally, a contractor (claimant) is *only entitled to recover loss or expense under s 27(2A) if the loss or expense is incurred "in exercising the right to suspend the carrying out of construction work or the supply of related goods and services"*. … The defendants' claim to be entitled to remove the plaintiff from the construction contract is independent of the plaintiff's having suspended the carrying out of construction work pursuant to s 27(1). It arises from asserted prior breaches which are claimed to trigger an entitlement to invoke cl 39.4. [emphasis added in italics and bold italics]

49 While the facts of those cases differ from those before me, the point of principle articulated remains germane – in both cases, the court was careful to emphasise the need for a *causal connection* between the "loss or expenses" claimed and the removal of contractual works by the respondent. If the claimed "loss or expenses" does not flow from such removal, then it would simply be irrecoverable under s 27(2A) of the NSW Act. In the present case, it is difficult to see how the "full contract sum" represents the measure of loss or expense flowing from the Plaintiff's removal of the Omitted Works. I agree with the Plaintiff that the Defendant is not entitled to claim "for the cost of work which it did not carry out just as a seller cannot claim the whole of the price of goods it did not deliver even if the buyer had repudiated the sale".[26] The proper measure of damages that the Defendant can claim is either its expectation loss or its reliance loss.

[26] Plaintiff's written submissions (19 October 2018) at para 20.

50 The relevant principles in this regard were succinctly set out by Chao Hick Tin JA in *Alvin Nicholas Nathan v Raffles Assets (Singapore) Pte Ltd* [2016] 2 SLR 1056 at [23]–[24]. In summary:

(a) In awarding damages pursuant to a repudiatory breach of contract, the court seeks to place the innocent party in the position he would have been in if the contract had been performed.

(b) Following this principle, damages for breach of contract are ordinarily assessed in terms of the claimant's *expectation loss*, which refers to the value of the benefit that the claimant would have obtained but for the breach of contract. Put another way, this refers to the gains the claimant expected as a result of the full performance of the contract.

(c) On occasion, damages for breach of contract may be quantified in terms of the claimant's *reliance loss*, which refers to the costs and expenses the claimant incurred in reliance on the defendant's contracted-for performance, but which were wasted because of the breach of contract. The basis for awarding damages based on reliance loss is the assumption that were the contract performed, the claimant would have at least fully recovered the costs and expenditure incurred (and hence the underlying principle, even where reliance loss is awarded, is likewise that the innocent party should be placed in the position he would have been in had the contract been performed).

(d) Claims for expectation losses and reliance losses are generally alternative claims. The reason is that a claim for profit is made on the hypothesis that the expenditure had been incurred. In other words, if damages for both expectation and reliance losses are awarded, the

> claimant would be put in an even better position that he would have been in if the contract had been wholly performed, because he would effectively have obtained the gains he expected as a result of the full performance of the contract, yet would not have had to incur the necessary costs in securing those gains. The claimant would be overcompensated.

51 I accept the Plaintiff's submission that allowing a claim for the "full contract sum" for the Omitted Works would put the Defendant in a better position than it would have been in if the Sub-Contract had been wholly performed. The Defendant would effectively be able to recover not only the profit that it expected to gain from the agreement (*ie,* its expectation loss) but also any costs that it had expended thus far in relation to the Omitted Works in order to secure those expected profits (*ie,* its reliance loss). In other words, there would be double recovery of the compensable "loss or expenses" envisaged under s 26(3) of the Act.

52 In oral argument, counsel for the Defendant referred me to the following extract from *Chow Kok Fong* at para 18.78:

> Loss and Expenses
>
> Secondly, the amount of loss and expense for which the claimant is entitled to be paid by the respondent must arise from the removal of the work from the underlying contract. *Provided that the loss and expenses can be* ***causatively traced*** *to the removal of work*, it is considered that the scope of loss and expense which may be recovered is not confined necessarily to *direct loss and expenses such as abortive work, cancellation charges relating to lower tier subcontracts, demobilisation, staff expenses, plant idling costs and transportation costs*. The expression 'any such loss or expenses' would *include loss of profit and head-office contribution arising from the omitted work*. [emphasis in original removed; emphasis added in italics and bold italics]

53 In my judgment, nothing in the above commentary lends support to the Defendant's position. On the contrary, the learned author's emphasis on the importance of ensuring that the "loss or expenses can be *causatively traced* to the removal of work" [emphasis added] is unmistakeable. He identified two species of recoverable losses and expenses. First, what he termed "direct loss and expenses", which includes "abortive work, cancellation charges relating to lower tier subcontracts, demobilisation, staff expenses, plant idling costs and transportation costs". While he did not expressly label it as such, it is plain that all of this pertains in essence to *reliance loss*, which is "direct" in the sense that it represents wasted expenditure that is more or less immediately ascertainable (as opposed to loss of profits, the existence or extent of which may require more substantial investigation). The second type of recoverable loss or expenses that the author identified was "loss of profit and head-office contribution arising from the omitted work". This concerns *expectation loss*. For completeness, "head-office contribution" (or contribution to head office overheads) refers to the amount which a contractor intends the particular contract to contribute toward the office and administrative expenses of operating his construction business as a going concern, and for this reason claims for recovery of head office overheads and claims for recovery of profits are typically assessed in the same way: see *Construction Contracts* at paras 10.101–10.102. The crucial point is that the quoted passage provides no authority for any attempt to concurrently recover expectation and reliance losses in a manner not permitted under the common law.

*Inconsistency with statutory intention*

54 I turn to consider the plausibility of the Defendant's argument when seen against the legislative intention in enacting the right to suspend and the associated statutory rights. In my view, nothing in the schema and content of

the Act even remotely suggests that a claimant sub-contractor would be entitled to the windfall that would arise out of awarding it, as a rule, the "full contract sum" as loss or expenses under s 26(3). As described at [39]–[42] above, the intention of s 26(3) is to preserve the sub-contractor's position during the period of suspension so as to sustain both the attractiveness and efficacy of the primary right to suspend. In other words, s 26(3) serves a *protective* function. There is no intention to enhance the sub-contractor's position beyond what would ordinarily be the case.

55 In my view, the Defendant's position is also inconsistent with the general approach of s 26, which has been crafted in a purposeful yet controlled manner so that the reach of the statutory rights does not exceed the purpose for which they were granted. One observe this from the clear limits imposed on the right to suspend under s 26, which is in some ways more carefully circumscribed than the equivalent provision in other jurisdictions. For instance, as mentioned at [24] above, the right to suspend only arises where there is an adjudication determination in the claimant's favour and the respondent has been served with a notice of intention to suspend works yet has refused to pay the adjudicated amount within the stipulated period. That can be contrasted with the approach taken in the UK Act, which provides that a party's right to suspend performance of his obligations under a construction contract arises where a sum due under the contract is not paid in full by the final date for payment and no effective notice to withhold payment has been given (see s 112(1) of the UK Act). In other words, a sub-contractor will be able to suspend works *even in the absence of an adjudication determination* in its favour, as long as payment under the construction contract has not been forthcoming. And in New South Wales – as explained at [45] above – the right to suspend works arises not only in situations where the respondent has failed to pay the adjudicated amount (see s 24(1) read

with s 27 of the NSW Act), but also where the respondent has not provided a payment schedule or has not made payment in accordance with a payment schedule (see ss 15(2)(b) and 16(2) read with s 27 of the NSW Act). The approaches in the Queensland Building and Construction Industry Payments Act 2004 (see ss 19, 20, 30 and 33) and the Victoria Building and Construction Industry Security of Payment Act 2002 (see ss 16, 17, 27 and 29) mirror that in the NSW Act. In all these jurisdictions, the right to suspend arises in a broader range of situations than under s 26 of our Act. Indeed, as observed in *Chow Kok Fong* at para 18.60, the position in Singapore appears to be closer to that originally envisaged by Sir Michael Latham in the Latham Report. Sir Michael Latham had conceived that "suspension should *only become available if the adjudicator has first been involved and has issued a decision* which the employer has then failed to honour with immediate effect" [emphasis added]: see the Latham Report at para 10.13.

56 Unlike the UK and Australia, our statutory regime always requires that an adjudication determination in the claimant's favour be interposed between the claimant's allegation about non-payment and its right to suspend works. The adjudication determination confers a degree of validation to the claimant's allegation. That is entirely consonant with the circumspection expressed in *Jia Min* at [57] on whether a general right to suspend works for non-payment should exist at common law:

> There appear to be strong grounds for denying such a right. The existence of such a right could *create chaos within the building industry if contractors were to muscle their way through disputes with threats or actual acts of suspension* instead of having their disputes adjudicated. Projects could be held to ransom with severe consequences. Furthermore, it would be incorrect in principle to imply in what is commonly viewed as "an entire contract for the sale of goods and work and labour for a lump sum payable by instalments", a right to break up performance

> into segments in the absence of any specific and express contractual agreement. [emphasis added]

57 That restrained attitude toward the right to suspend is further reflected in the Minister's explanation of s 26 during his speech at the Second Reading of the Bill (see *Singapore Parliamentary Debates* at col 1118):

> *To prevent abuse and minimise the negative impact of work suspension on the progress of a project, several safeguards have been incorporated in the Bill.* Firstly, the claimant is allowed to suspend work or exercise a lien only when the adjudicated amount is not paid after the adjudicator's decision. Secondly, the claimant must serve a 7-day notice of such intention on the respondent, the owner and the principal before he can do so. This gives ample time for the principal or the owner or developer to assess the consequences and take action if necessary, including making a direct payment to the claimant. Thirdly, the suspension must be lifted within three days if the respondent pays the adjudicated amount. Any other third party affected by the work suspension will also have rights to extension of time in the project. To further avert work suspension, the principal has an option to pay directly to the claimant, in the event that the respondent fails to pay the adjudicated amount. The principal may then recover the amount by deducting it from subsequent payments to the respondent. [emphasis added]

58 Apart from the conditions to be satisfied before the right to suspend is triggered, the Minister was essentially outlining ss 26(4), (5) and (7) of the Act. Under ss 26(4) and (6), the claimant's right to suspend dissipates upon the respondent's payment of the adjudicated amount, and if the claimant fails to resume its work within 3 days of payment, it will be liable to pay for loss or damage suffered not only by the respondent, but also by the principal. That is a sharp about-turn from the protective stance taken toward the claimant under s 26(2)(*b*), which provides that during the period of suspension the principal and owner may only seek damages from the respondent and not the claimant (see [31]–[33] above). Section 26(5) provides for a means by which the suspension can be lifted other than the respondent's payment. If the principal, who is a licensed housing developer and who has not previously defaulted in payment,

serves a notice of payment on the claimant, the claimant must resume work within 3 days. Section 26(7) serves to mitigate the effect of suspension on other parties involved in the works, by allowing the period of suspension to be disregarded in computing, for the purposes of any contractual time limit, the time taken by such third party to complete works directly or indirectly affected by the exercise of the right of suspension.

59 There can accordingly be little doubt that both the scope and the effects of the right to suspend under s 26 are tightly controlled and given no more latitude than what is sufficient to achieve the statutory purpose. I find that the Defendant's suggestion that it may claim such a measure of damages that exceeds what it would ordinarily be entitled to sits most easily with the statutory scheme and its underlying philosophy.

*Urban Traders Pty Ltd v Paul Michael Pty Ltd*

60 The Defendant argues in favour of a "liberal interpretation" of "loss and expenses", relying on the following observation of McDougall J in *Urban Traders* at [78]:[27]

> It is trite to observe that the [NSW] Act is remedial legislation, enacted for the benefit of builders and subcontractors; and that *it should be given a liberal construction, to the extent that its language will permit.* In my view, to construe the reference to "loss or expense" incurred "as a result of the removal … of any part of the work" narrowly, so as a priori to exclude any claim for lost profit on the removed work, is not consistent with the *evident intention of the [NSW] Act.* Nor is it an approach dictated, despite that evident intention, by the intractable language of s 27(2A). [emphasis added]

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27 Defendant's further submissions (19 October 2018) at paras 16 and 19.

61 The Defendant's reliance on the above *dicta* in support of its argument is, in my judgment, entirely misplaced. In *Urban Traders*, the builder served a payment claim which included a claim for losses and expenses purportedly arising from a suspension of works under s 27(2A) of the NSW Act. In addition, the builder claimed "losses and expenses it ha[d] incurred as a result of the [proprietors] taking over or removing the remaining work under the Contract while [the builder] was exercising its right to suspend under the [NSW] Act", such losses and expenses consisting of "the contribution to overhead and profit incorporated in the pricing of the unfinished portions of the work": *Urban Traders* at [67]. The proprietors contended that the claim for lost profits was not a claim capable of falling within s 27(2A) of the NSW Act, because it was a claim for damages for breach of contract and not a claim for an amount due for construction work within the definition of a "claimed amount" in s 4 of the NSW Act. McDougall J rejected the argument, finding (as set out in the quoted passage in the preceding paragraph) that a claim for "loss or expense" under s 27(2A) includes a claim for lost profit and therefore can be referred to and determined by an adjudicator: *Urban Traders* at [79].

62 In my judgment, the Plaintiff is inarguably correct when it points out that McDougall J's decision only concerned whether lost profits can be claimed under s 27(2A) of the NSW Act – a question which is not disputed before me – and not whether the "full contract sum" can be claimed. In addition, what McDougall J highlighted in reaching her decision on this point was "the evident intention of the [NSW] Act"; and as I have explained earlier, the statutory intention behind the enactment of our Act does not extend to putting a claimant in a better position than is otherwise justified in relation to the measure of recoverable loss and expenses flowing from the removal of works from the sub-contract during the period of suspension.

**Findings and conclusion**

63 For the foregoing reasons, I am satisfied that insofar as the Counterclaim for Omitted Works suggests that the Defendant is "entitled to the full contract sum", it discloses no reasonable cause of action or defence under O 18 r 19(1)(*a*) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). However, I am of the view that my discretion under O 18 r 19(1) should be exercised in favour of ordering a suitable amendment of the pleadings rather than a striking out of the Counterclaim for Omitted Works altogether. I follow the well-established principle that the court's power to strike out should be exercised sparingly and if the deficiency or defect can be cured by way of an amendment, it would be preferable to allow such amendment rather than to take the more drastic course of striking out the pleading: *Ching Mun Fong (executrix of the estate of Tan Geok Tee, deceased) v Liu Cho Chit and another appeal* [2000] 1 SLR(R) 53 at [23].

64 I therefore order that para 98 of the Defence and Counterclaim (Amendment No. 2), which reads, "The Defendant avers that the Plaintiff is not entitled to omit the aforementioned works and the Defendant avers that it is entitled to the full contract sum" be amended so as to replace the phrase "the full contract sum" with "damages to be assessed". I do not find that para 97 of the Defence and Counterclaim (Amendment No. 2), which the Plaintiff also seeks to strike out, contains anything pertaining to the objection that the Plaintiff has taken, and therefore make no order in that respect.

65 I will hear the parties on costs and consequential matters.

Elton Tan Xue Yang
Assistant Registrar

Yap Jie Han (Wong Tan & Molly Lim LLC) for the plaintiff;
Genevieve Wong, Poonaam Bai, Pramnath Vijayakumar and Lee Shu Qing (Eldan Law LLP) for the defendant.

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