IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 286

Suit No 662 of 2012

Between

Sintalow Hardware Pte Ltd

… Plaintiff

And

OSK Engineering Pte Ltd

… Defendant

JUDGMENT

[Commercial Transactions] — [Sale of goods]
[Contract] — [Remedies] — [Damages]

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Sintalow Hardware Pte Ltd
v
OSK Engineering Pte Ltd

[2019] SGHC 286

High Court — Suit No 662 of 2012
Lai Siu Chiu SJ
3, 4, 6 June 2019; 8 August 2019

9 December 2019 Judgment reserved.

Lai Siu Chiu SJ:

Introduction

1 This case concerned a dispute between the parties over the supply of pipes, valves and other plumbing fittings ("the Products") to OSK Engineering Pte Ltd ("OSK") from Sintalow Hardware Pte Ltd ("Sintalow") for installation in the Marina Bay Sands hotel project ("the MBS Project") in 2007. The dispute as to liability has been dealt with by the High Court in *Sintalow Hardware Pte Ltd v OSK Engineering Pte Ltd* [2016] SGHC 104 ("the HC Judgment") and by the Court of Appeal in *Sintalow Hardware Pte Ltd v OSK Engineering Pte Ltd* [2017] 2 SLR 372 ("the CA Judgment"). This judgment deals with the dispute as to quantum.

2 Sintalow sued OSK for breach of contract. Sintalow's case was that the parties' relationship was governed by what it called a Total Package Agreement

("TPA") under which Sintalow agreed to give OSK special discounts on the Products in consideration of OSK's commitment to purchase at least S$5m worth of the Products. The TPA was partly oral and partly written.

3 OSK's case on the other hand was that the parties' contractual obligations were governed by OSK's letter dated 21 November 2007 (termed the "Master Contract" by the trial judge).

4 After a lengthy trial, the trial judge found in favour of Sintalow and held that the Master Contract governed the parties' relationship. The court also found that OSK had not accepted three separate quotations for the Products based on various bills of quantities for the stated quantities, prices, terms and conditions ("the Products Agreements"). It was further held that OSK did not make representations to Sintalow as to the minimum value of the Products that it would purchase from Sintalow.

5 Judgment was awarded to Sintalow on 25 May 2016 in the following terms (see the HC Judgment at [133]):

(a) OSK was to pay Sintalow for all CV couplings that Sintalow delivered to OSK with the customised rubber collars.

(b) Damages would be assessed in respect of:

(i) The order placed by OSK for the additional Duker Hubless products by way of OSK's letter dated 7 March 2008 and sent by facsimile on 10 March 2008 ("the additional Duker Hubless products"). The additional Duker Hubless products were those underlined in Sintalow's quotation dated 3 March

2008 and the price and quantities of those underlined products were to be applied in the assessment of damages.

(ii) The order placed for Duker Hubless cross tees by way of OSK's letter dated 23 May 2008 ("the Cross Tees Agreement").

(iii) The order placed for customised rubber collars on 8 May 2008 by way of OSK's letter dated 8 May 2008.

6 With regards to the three matters referred to at [5(b)] above, OSK's three letters dated 7 March 2008, 23 May 2008 and 8 May 2008 and Sintalow's quotation dated 3 March 2008, were presented in court in volume 1 of the Agreed Bundle of Documents.

7 Sintalow appealed against the HC Judgment in Civil Appeal No 83 of 2016 ("the Appeal") against the following findings made by the trial judge:

(a) that the general contractual terms between the parties were contained in the Master Contract and not in the TPA;

(b) that OSK did not make any representations as to the estimated sales amount or that the quantity of products to be purchased from Sintalow would be equivalent to the estimated sales amount;

(c) that Sintalow and OSK did not conclude the three Products Agreements;

(d) that OSK is not liable to Sintalow for the undelivered quantity of Fusiotherm products because Sintalow refused to deliver the same to third parties to whom OSK had sold them;

(e) insofar as damages are to be assessed for the excess supply of Duker Hubless products ("Excess Duker Hubless products") as described in [120] of the HC Judgment, that the quantities of Duker Hubless pipes that Sintalow had difficulty supplying to OSK must be deducted from the assessment of damages;

(f) insofar as damages are to be assessed for OSK's order for cross tees under the Cross Tees Agreement, that those damages are to be assessed on the basis that Sintalow was obliged to give OSK the same discount for the cross tees as it had promised for the other Duker products and that it was not reasonable for Sintalow to place a further order for cross tees when OSK had already indicated it no longer wanted them; and

(g) insofar as Sintalow was entitled to payment for the CV couplings under an 8 May 2008 letter from OSK to Sintalow ("Rubber Sealing Agreement"), that Sintalow was entitled to payment at the quoted price less the 40% discount agreed to in the Master Contract.

8 On 27 April 2017, the Appeal was allowed in part by the Court of Appeal (see the CA Judgment). The appellate court held, *inter alia*, that:

(a) The Master Contract was not a contract of sale and purchase for the Products. OSK was not obliged to buy nor was Sintalow obliged to sell any of the Products under the Master Contract.

(b) The Products Agreements were binding contracts upon OSK's acceptance of Sintalow's quotations for the Products with respect to the bills of quantities issued by OSK. In so far as the terms and conditions

specified therein were inconsistent with the general conditions in the Master Contract, they would have the effect of varying and/or superseding the general conditions.

(c) OSK was in breach of its obligations to take delivery of the excess valves as described at [66] of the CA Judgment ("Excess Valves") and the Excess Duker Hubless products and accordingly is liable for damages to Sintalow.

(d) Although OSK was under an obligation to take delivery of excess Fusiotherm PPR products as described at [91] of the CA Judgment ("Excess Fusiotherm PPR products"), it was not in breach of this obligation as Sintalow had wrongfully refused to deliver the same to nominated third parties to whom OSK had on-sold.

(e) OSK did not represent to Sintalow that it would place orders for the Products to the total value of not less than S$5m.

(f) OSK was not entitled to the special discount of 23% for the cross tees as that term was superseded by the higher discount of 41.43% in the Cross Tees Agreement.

(g) OSK was entitled to the 40% discount as provided in the Master Contract for the CV couplings delivered pursuant to the Rubber Sealing Agreement.

9 The task of this court was to assess the damages awarded to Sintalow under the HC Judgment as varied by the CA Judgment.

The assessment hearing

10 For the assessment of damages, there were three witnesses called by the parties. Sintalow's only witness was its managing director, Chew Kong Huat (also known as Johnny Chew) ("Chew"). In the trial on liability, Chew had also testified for Sintalow. OSK's witnesses were its general manager, Madam Oh Swee Kit ("Mdm Oh"), who is the wife of its managing director, Tan Yeo Kee, as well as its deputy general manager, Chay Ann Ling ("Chay").

Sintalow's case

11 In his affidavit of evidence-in-chief ("AEIC"), Chew claimed the following sums from OSK:

No	**Description**	**Amount (S$)**
1	Products ordered by OSK but undelivered	1,937,592.21
2	Refund of discount for new Duker Hubless orders that were delivered	6,195.32
3	Costs of CV couplings that were delivered	35,387.76
4	Less: overcharged amount	(10,595.04)
Total claim:		**1,968,580.25**

12 As an alternative to the $1,937,592.21 specified in item 1 above, Sintalow claimed loss of profits amounting to $926,298.06. Added to items 2

and 3 above and less item 4, Sintalow's alternative claim amounted to a total of $957,286.10.[1]

13 Chew's AEIC referred to [132] of the Judgment where the court found that OSK took delivery of 5,142 pieces of 150mm CV couplings with 5mm rubber collars and 674 pieces of 200mm CV couplings with 5mm rubber collars leaving a balance of 758 pieces undelivered. At $7.80 per piece, the cost of the 758 pieces amounted to $5,912.40.[2]

14 Chew, in his AEIC, noted that the Court of Appeal had allowed Sintalow's claim for the Excess Valves (see [8(c)] above).[3] He elaborated on this claim at paras 74 to 87 of his AEIC, giving the history behind OSK's orders under various valve agreements (which Chew compiled in a spreadsheet referred to as the "Material List for Valve Orders") with a breakdown thereof as to the types of valves supplied, as well as the various prices. Based on the Material List for Valve Orders, Chew asserted that OSK was liable to Sintalow for $788,230.30.[4]

15 Chew explained that Sintalow considered any orders above $500,000 in value a "large scale order". For such large scale orders (as was the case for OSK's orders for the MBS project), Sintalow adopted the following course of conduct with its purchaser:[5]

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1 Chew Kong Huat's AEIC dated 14 February 2019 ("CKH") at para 41.

2 CKH at paras 70–71.

3 CKH at para 73.

4 CKH at para 87.

5 CKH at paras 89–90.

(a) Sintalow would provide its standard price lists for the products that the purchaser intended to purchase.

(b) The purchaser would usually negotiate for a discount after which the purchaser would issue bill of quantities for its order(s).

(c) Sintalow would use the purchaser's bill of quantities to negotiate prices with its suppliers for the products ordered.

(d) Sintalow would then issue a quotation to its purchaser setting out the prices for each of the products listed in the bill of quantities as well as any discounts Sintalow offered.

(e) An agreement would be formed by the purchaser signing Sintalow's quotation.

(f) Due to the dynamic nature of large scale projects the purchaser would typically be allowed to vary the quantities it ordered from Sintalow by +/– 10%. Any variation in excess of the +/– 10% buffer required Sintalow's consent.

(g) The purchaser was required to provide Sintalow with a delivery schedule setting out the approximate dates by which the purchaser would require delivery. This was to enable Sintalow to plan its stock for the project as the existing stock in Sintalow's warehouse would likely be insufficient to meet the orders.

(h) Sintalow would in turn inform its supplier of the purchaser's orders as well as the delivery dates.

(i) The purchaser's requests for deliveries were to be made by fax or email, setting out the place and date for delivery together with the types and quantities of products to be delivered.

16 Chew deposed that Sintalow was unable to use the Excess Valves or supply them to other customers because they had aged and de-colourised over time. He explained that although a development called the Duo Residences was another big project that Sintalow supplied valves to, Sintalow could not utilise the Excess Valves for the Duo Residences project because it could not supply products of two different ages and colours for installation in the same project as the difference would be obvious and would expose Sintalow to complaints from contractors. It would also be detrimental to Sintalow's reputation in the industry.[6]

17 Chew deposed that before OSK's repudiation of the contract, Sintalow had (as early as late 2007) already purchased the quantities which constituted the excess supply and which were either:[7]

(a) in the process of being shipped to Sintalow; or

(b) yet to be shipped to Sintalow.

Consequently, Sintalow was unable to cancel or change OSK's orders with Sintalow's suppliers. However, Sintalow was ready, willing and able to deliver the Excess Valves at all times.

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6 CKH at paras 106–107.

7 CKH at paras 108, 117.

18 Chew alleged that OSK deliberately prevented another contractor which could have utilised the excess supply from ordering products from Sintalow. He explained that OSK was appointed a sub-contractor of the Ng Teng Fong Hospital project ("the Hospital project"). OSK in turn appointed Deluge Fire Protection (SEA) Pte Ltd ("Deluge"), which in turn appointed Zenith E&C Pte Ltd ("Zenith"), now known as Deluge E&C Pte Ltd.[8]

19 Between September and December 2012, Zenith had approached Sintalow for price quotations for various products including cast iron pipes and valves. Following negotiations, Sintalow provided Zenith with revised quotations for both Duker Hubless pipes and fittings as well as various types of valves ("the Hospital quotations"). The Hospital quotations encompassed some items which overlapped with the excess products.[9]

20 Chew deposed that he met with one Tom Leong, a representative of Zenith, sometime around end-2012 to discuss Zenith's purchase of the products listed in the Hospital quotations. Tom Leong informed Chew that although Sintalow's pricing of the products was acceptable, any purchase by Zenith required OSK's approval. Sintalow's sale to Zenith did not materialise. Chew then discovered from company searches he conducted that OSK, Deluge and Zenith all shared the same address.[10]

21 Chew deposed that in or around 2009, OSK informed Sintalow that it was unable to utilise all the products it had ordered. OSK requested that

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8 CKH at para 129.

9 CKH at para 130.

10 CKH at para 131.

Sintalow allow it to supply the excess products to OSK's other projects and to do so at the prices agreed under the various agreements with Sintalow relating to the MBS project.[11]

22 Sintalow eventually agreed to deliver the excess products to OSK's other projects, notwithstanding that the parties had previously agreed that the discounted prices would only apply to Products supplied for the MBS project. Sintalow did so in order to mitigate its losses arising from OSK's inability to accept delivery of the Products ordered under the various agreements.[12]

23 That said, the discounted prices were applicable only up to the quantity of products ordered by OSK under the MBS project. Where the quantity of products delivered to OSK's other projects *exceeded* those ordered under MBS project, OSK was not entitled to the discounted prices. However, at times, Sintalow's staff accidentally accorded the discount even on quantities of products going over and above those ordered under the MBS project. This undercharging was the basis of Sintalow's claim for $6,195.32 stated in [11] above.[13]

24 Sintalow also managed to sell some of the excess products to other purchasers in its efforts to mitigate its losses. The particulars are as follows:

No	**Purchaser**	**Amount (S$)**
1	PT Afaflow (Indonesia)	165,324.30

11 CKH at para 134.

12 CKH at para 135.

13 CKH at paras 139–140.

2	Cash sales to ad hoc purchasers	88,586.41
Total:		**253,910.71**

25 Chew disclosed that he and his wife, Pauline Aw, became shareholders of PT Afaflow in 2011–2012. He deposed that between 2012 and 2015, Sintalow sold some of the excess supply to PT Afaflow at prices that were in line with the Indonesian market but which were lower than the prices prevailing in Singapore. If, for example, Sintalow sold a product to OSK at $152, it might sell that same product to PT Afaflow at $25–45.[14] He said that the Indonesian market is more competitive than Singapore and that it has many more different distributors supplying pipes and fittings than Singapore.[15]

26 Chew revealed that his wife became the commissioner of PT Afaflow on or about 13 February 2013, taking over from one Ms Shang Weili, who was Chew's business partner. He had to consult Ms Shang before PT Afaflow made the purchases from Sintalow.[16]

27 Chew deposed that in 2015, the Public Utilities Board ("PUB") changed the standards governing the types of pipes and fittings which could be used in construction projects in Singapore. Some of the excess Duker Hubler products were non-compliant with PUB's revised standards and were rendered unsuitable for use in construction projects in Singapore as a result.[17]

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14 NE (4 June 2019), p 137 at lines 15–20

15 CKH at paras 145–146, 149.

16 CKH at paras 147, 151.

17 CKH at para 152.

28 For example, under the revised PUB standards, the height for P Traps and S Traps increased from 75mm to 80mm. OSK's order was procured by Sintalow prior to PUB's revision of the heights for P Traps and S Traps.[18]

29 Sintalow retained for three years the 75mm Traps ordered by OSK ("the scrapped products") in the hope that they could be sold to overseas contractors. Unfortunately, even after three years, Sintalow was unable to sell the scrapped products. To cut its losses, Sintalow sold off the scrapped products to a scrapyard vendor called Neo Hardware Pte Ltd for $31,787.00.[19]

30 Chew added that some products ordered by OSK did not have a ready market and hence, Sintalow was precluded from selling them to other parties. Such products included:[20]

(a) Rubber collars – The trial judge had found (at [130] of the HC Judgment) that these had been specially made for the MBS project.

(b) Solder gate valves – These have limited applicability as they can only be used with a copper pipe system whereas construction projects in Singapore typically use plastic (PPR) systems.

(c) PIR/PRV valves – These high-end valves are usually found in hotels and are not used in normal construction projects in Singapore without the requisite budget to use this product.

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18 CKH at paras 153–154.

19 CKH at paras 155–157.

20 CKH at para 169.

(d) Thermosel expansion joints – These joints are made of stainless steel material whereas typical construction projects in Singapore use cheaper rubber expansion joints.

(e) Access doors – These doors are not necessary for construction projects. A particular project with a limited budget may chose not to have access doors to save costs.

(f) Cross tees – Only certain specifically designed systems would utilise cross tees. In Chew's experience (of more than 40 years), the MBS project was the only project for which Sintalow has supplied cross tees.

31 Chew added that the brands of products that OSK used for the MBS project included AFA, Duker. KKK, FC and Thermosel. These are high-end products in terms of quality and were substantially more expensive than what contractors normally use and hence, have a limited market.[21]

32 Chew gave the following breakdown for the sum claimed of $1,937,592.21 in item no 1 at [11] above:[22]

No	**Description**	**Amount (S$)**
1	Valves orders	788,230.30
2	Duker Hubless orders	887,912.25
3	Additional Duker orders	476,291.00

21 CKH at para 168(b).

22 CKH at para 172.

4	Cross Tees orders	64,943.97
5	Rubber Collars orders	5,912.40
6	Less: Products sold to third parties	(253,910.71)
7	Less: Products that were scrapped	(31,787.00)
Total:		**1,937,592.21**

33 Chew disputed OSK's claim that Sintalow had overcharged for the above in the amount of $204,431.49. He pointed out that:[23]

(a) The agreed discounts only applied to the valves and the Duker Hubless quotations and not to the additional new products. Nor were the discounts applicable to additional quantities of the valves and Duker Hubless products over and above the 10% buffer. Further, Sintalow had already provided discounts for certain products by the issuance of credit notes.

(b) OSK had used the wrong unit price for certain products when calculating the discounted price applicable.

(c) OSK was not entitled to any discount for the specially manufactured rubber sealings.

34 Chew had painstakingly compiled at Annex I of exhibit CKH-6 of his AEIC[24] Sintalow's calculations in response to OSK's allegation of

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23 CKH at para 176.

24 9AB 5682–5705.

overcharging. Based on Sintalow's table, Chew asserted that OSK was only entitled to a refund of $12,233.14 before a set-off of $1,638.10 in respect of products for which Sintalow had undercharged OSK, leaving a net sum of $10,595.04 in favour of OSK.[25]

35 He added that it would not make commercial sense for Sintalow to give a *carte blanche* discount for all products to be supplied in respect of the MBS project since Sintalow would not have locked in the prices with their suppliers for additional products.[26]

OSK's case

36 There is some merit to Sintalow's point[27] that OSK is, in substance, challenging the Court of Appeal's findings against it on liability as, in Mdm Oh's AEIC, it was asserted that Sintalow was not entitled to damages for P Traps, S Traps and AFA products[28] even though the issue of liability had been determined in the HC Judgment and the CA Judgment. Mdm Oh had to be reminded that the court's function was only to assess damages due to Sintalow for OSK's breach – which breach *had already been established* by the High Court and affirmed by the Court of Appeal.[29]

37 Consequently, this court was left with no choice but to disregard the portions of Mdm Oh's AEIC which repeatedly harped on OSK's right to reject

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25 CKH at para 188.

26 CKH at para 180.

27 Plaintiff's closing submissions at paras 4-5.

28 Oh Swee Kit's AEIC dated 14 February 2019 ("OSK") at paras 12, 20.

29 NE (3 June 2019), pp 107–108.

Sintalow's supply of various products, or alleged that Sintalow had failed to deliver any of the products to OSK. The latter allegation was in any case never pleaded nor raised by OSK when the issue of liability was tried, as counsel for Mdm Oh conceded.[30] It is too late to raise these allegations now.

38 In Chay's AEIC, he alleged that OSK would only be liable to Sintalow for losses if the market price of the Products did not exceed the contract price.[31] However, no evidence was presented to substantiate the claim that there was an available market and the market price for the Products that OSK failed to accept from Sintalow exceeded the contract price.

39 Mdm Oh, in her AEIC, alleged that Sintalow had failed to supply P Traps and S Traps that were made locally – the Traps that Sintalow supplied came from Shanxi, China.[32] However, as Chew had explained,[33] the Shanxi supplier only manufactured the *castings*, which Sintalow then imported and modified to form P Traps and S Traps. When she was cross-examined,[34] Mdm Oh admitted that Chew had shown her sample mock-ups of the P Traps and S Traps. She well knew therefrom that the samples were made in China but modified by Sintalow in Singapore to comply with OSK's specifications for the MBS project. She did not complain then and it is too late now for OSK to complain about the origin of those two items. In any case, in answer to the

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30 NE (3 June 2019), p 103.

31 Chay Ann Ling's AEIC dated 14 February 2019 ("CAL") at para 40.

32 OSK at para 11.

33 NE (3 June 2019), pp 69–70.

34 NE (6 June 2019), pp 264–265.

court's questions,[35] Chew testified that Sintalow does not actually manufacture any of the Products in Singapore. Sintalow would modify products it sourced from its overseas suppliers to suit its customers' requirements and/or specifications.

40 Yet another complaint in Mdm Oh's AEIC related to the AFA products that Sintalow supplied. She understood that these were supposed to be locally produced. Instead, Sintalow sourced its supply from China. She therefore contended that Sintalow was not entitled to damages for this item.[36] Again, it is too late to raise this complaint now. That could and should have been raised at the trial on liability. The issue of the origin of the Products supplied is not before this court.

41 Mdm Oh's next complaint was that Sintalow could not supply the quantity of Duker Hubless cross tees that OSK had ordered. Yet when OSK requested on 26 May 2008 that Sintalow put its order for cross tees on hold until further notice, Sintalow responded by letter on 2 June 2008 to say no cancellation was allowed. Knowing full well that OSK did not wish to take delivery of the product, Sintalow proceeded to place an order for 1,000 cross tees with its supplier on 1 July 2008. Consequently, she asserted that OSK is not liable to pay for the 1,000 cross tees that Sintalow ordered.[37]

42 In essence, Mdm Oh was repeating [123] of the HC Judgment which was affirmed at [118] in the CA Judgment.

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35 NE (3 June 2019), p 16 at lines 2–5.

36 OSK at paras 13, 19–20.

37 OSK at paras 21–24.

43 OSK relied on Chay's AEIC to contend that Sintalow could not deliver cross tees to OSK based on its inventory lists.[38] In its closing submissions, Sintalow submitted that it was highly inaccurate of OSK to rely on Sintalow's inventory list to make this assertion for the following reasons:

(a) The inventory lists would not show unassembled goods that Sintalow modifies for its customers.[39]

(b) The inventory lists only captured a year-end snapshot of the quantities of products in Sintalow's warehouse and would not capture the fluctuations in quantities throughout the year.[40]

(c) The supplier of Thermosel expansion joints (*ie*, Pickup Bellows (S) Pte Ltd ("Bellows")) shared the same premises as Sintalow and it kept its own inventory of its stock. Sintalow would issue purchase orders to Bellows for Thermosel expansion joints which the latter then delivered to Sintalow's customers. Sintalow's inventory lists would not contain this product.[41]

44 I had earlier alluded to Chay's evidence at [10] and [38]. In his AEIC, Chay deposed that he joined OSK on 1 September 2011.[42] This was well after the parties' relationship began in 2007, well after the Products Agreements were concluded and after the supply of products to the MBS project was effected.

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38 CAL at para 14.

39 PCS at paras 135–138.

40 PCS at para 139.

41 PCS at para 137.

42 CAL at para 4.

Indeed, it was even after the dispute between the parties arose. Chay was therefore not privy to any of the relevant facts. His testimony was essentially his opinion based on his review of the documents disclosed by the parties in this suit. However, Chay was neither a witness of fact nor was he an expert. What weight could the court possibly give to his opinion which was also clearly not independent? What probative value did his testimony have? The answer to both questions is none.

45 Sintalow's counsel had rightly objected to Chay's AEIC before Chay took the stand. The only factual aspect of Chay's evidence was his taking of some photographs purportedly of Duker Hubless pipes that were installed at the Duo Residences development and the Sengkang Community Hospital.

46 I should add that before Chay took the stand, OSK's counsel informed the court[43] that OSK would be confining Chay's testimony to paras 41 to 47 of Chay's AEIC namely, his assertion that Sintalow had underdeclared the Products it sold to third parties in mitigation of its loss resulting from OSK's repudiation of the Products Agreements.

47 Chay relied on the (undated) photographs he took[44] to support his testimony that Sintalow's invoices as disclosed showed no sales of Duker Hubless pipes, cross tees, bends and couplings to the sanitary/plumbing contractors for Sengkang Community Hospital and Dou Residences, namely,

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43 NE (6 June 2019), p 306 at lines 13–19.

44 See exhibit CAL-12 (8AB 5317–5345).

Acmes-Kings Corporation Pte Ltd and Wang Kok Sewerage Construction Pte Ltd respectively.[45]

The issue

48 The two issues to be determined by this court are: (i) what losses did Sintalow suffer as a result of OSK's breach of the Products Agreements and (ii) what is the resultant quantum of damages to be awarded to Sintalow?

The submissions

49 At the commencement of the hearing, I was informed that Sintalow had withdrawn its claim for storage charges amounting to $277,114.97.[46] In the course of the trial, I was also informed that OSK (as confirmed by its counsel, Mr Andrew Ang) had agreed to and accepted the following figures relating to (i) the value of products sold to third parties amounting to $256,764.71,[47] (ii) the discount amounting to $6,195.32 on new Duker Hubless orders that Sintalow delivered,[48] as well as (iii) the refund to OSK of $10,595.04 for overcharging by Sintalow.[49] (iv) In its closing submissions, OSK accepted Sintalow's figure of $35,387.76 for the cost of CV couplings that it delivered.[50] I was also informed that OSK had withdrawn its counterclaim of being

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45 CAL at para 47.

46 NE (3 June 2019), p 6 at lines 9–15.

47 NE (6 June 2019), p 225 at lines 3–19.

48 NE (6 June 2019), p 290 at lines 15–25.

49 NE (6 June 2019), p 227 at lines 11–17.

50 Defendant's closing submissions ("DCS") at para 185.

overcharged $204,431.49 by Sintalow.[51] The net sum in favour of Sintalow from items (ii) to (iv) is $30,988.04.

50 The court's function was to determine Sintalow's entitlement to the remaining figures set out at para 194 of Chew's AEIC and repeated at [32] above.

51 As was pointed out by counsel for Sintalow, OSK made no concessions whatsoever before the assessment commenced – neither the AEIC of Mdm Oh nor Chay or even OSK's opening statement offered any amount that OSK was willing to pay to Sintalow by way of damages for loss of profits. This was only done in OSK's closing submissions.[52] Had the concession been made earlier, the assessment exercise could have been expedited and/or shortened.

52 As OSK did not produce any or any credible evidence through Mdm Oh or Chay to rebut Sintalow's various heads of claim, it relied solely/wholly on Sintalow's evidence for its case. In its closing submissions, OSK dwelt at length with the figures disclosed in Sintalow's inventory lists to buttress its conclusion that despite Chew's claim to the contrary, there was a ready market for the products that OSK failed to take delivery of, or that Sintalow had in fact sold off more of the products ordered by OSK than it had disclosed and those sales were not accounted for.[53] Hence, OSK argued, Sintalow was not entitled to the amount it was claiming for loss of profits.

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[51] NE (6 June 2019), p 227 at lines 18–24.

[52] At para 184

[53] DCS, Section C.

53 OSK submitted that s 50 of the Sale of Goods Act (Cap 393, 1999 Rev Ed) ("SOGA") applies, whereas Sintalow argued that s 50 does not apply as the SOGA was not pleaded in OSK's defence. Indeed, in its closing submissions,[54] Sintalow submitted it was taken by surprise and would be prejudiced if OSK was allowed to rely on s 50 of the SOGA.

54 Section 50 of the SOGA states:

> **Damages for non-acceptance**
>
> **50.**—(1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance.
>
> (2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.
>
> (3) Where there is an available market for the goods in question, the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been accepted or (if no time was fixed for acceptance) at the time of the refusal to accept.

55 OSK had sought to persuade the court that although the SOGA itself was not specifically pleaded (in its Defence (Amendment No 5) dated 13 October 2017, it had nevertheless pleaded the facts relevant to s 50(3) at para 76 of the Defence (Amendment No 6) dated 27 November 2017 where it averred, *inter alia*, that:

> …there was an available market for the Products under the Agreements for the Excess Supply at the relevant time, and that the Plaintiffs are not entitled to claim the difference between the price of the Products under the Agreements for the Excess Supply and the cost price of the Products which the Plaintiffs expended or would have expended to obtain the same.

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54 PCS, Section VIIB.

56 On Sintalow's part, Chew's AEIC[55] had addressed the issue of the lack of a ready or available market for some of the high-end products ordered by OSK; this included AFA, Duker, KKK, FC and Thermosel products, or unique products like cross tees which only the MBS project used. I had earlier touched on this aspect of Chew's evidence at [30] and [31] above.

57 Since Chew had himself adopted the language of s 50 of the SOGA in his AEIC, I reject Sintalow's argument that the SOGA does not apply to this assessment and that it would prejudice Sintalow if OSK was allowed to rely on the same. The rule of pleadings is that facts that a party relies on must be pleaded but not the law.

58 In its submissions, OSK did not accept Chew's evidence set out earlier (at [30] and [31] above) that there was no ready market for the four products OSK failed to take delivery of, and disputed Sintalow's resultant loss of profits.

59 OSK further submitted that for the solder gate valves, Duker Hubless products and cross tees, Sintalow's inventory decreased but either (i) there was no corresponding outflow to OSK or disclosed sales to third parties or (ii) the decrease in inventory exceeded the outflow to OSK or disclosed sales to third parties.[56]

60 Hence, OSK contended[57] that Sintalow's proven loss of profits was $493,391.82 and not $926,298.06 as claimed because Sintalow had failed to

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55 CKH at paras 168–171.

56 DCS at para 79.

57 DCS at paras 183–184.

adduce any satisfactory evidence on the cost price for the following products accounting for a difference of $432,904.24:

Size (mm)	**Description**	**Sintalow's alleged loss of profits (S$)**
80	AFA CV	2,665.80
100	AFA CV	13,232.62
150	AFA CV	2,606.37
200	AFA CV	2,149.13
80	AFA GV	1,101.29
100	AFA GV	29,850.59
150	AFA GV	11,529.49
200	AFA GV	8,002.24
100	Strainer	2,141.05
150	Strainer	762.79
200	Strainer	909.26
100	DI Flexible Joint	11,940.48
150	DI Flexible Joint	4,102.41
200	DI Flexible Joint	3,941.74
100x100x50	P Trap	34,934.15
100	P Trap	155,404.59
100	S Trap	9,510.00

70	CV Coupling	75,397.32
100	CV Coupling	18,574.92
150	CV Coupling	5,208.00
100	Thermosel Expansion Joint	6,720.00
150	Thermosel Expansion Joint	4,248.00
200	Thermosel Expansion Joint	4,800.00
50	Solenoid Valves	729.60
150	Solenoid Valves	16,530.00
150	Rubber Sealing with 5mm thickness	5,912.40
Total:		**432,904.24**

61 Sintalow's response to OSK's submission above was to refer to the relevant purchase orders in the agreed bundles of documents which set out the prices and quantities of products that Sintalow procured in relation to the various items listed by OSK, such as the AFA GV (gate valves) and Thermosel expansion joints.[58] Sintalow added that subsequent to the issuance of purchase orders, its suppliers, Jiwa Industries Pte Ltd ("Jiwa") and Bellows[59] had

[58] PCS at para 120.

[59] 1AB 205–206.

confirmed their acceptance of Sintalow's purchase orders.[60] Moreover, Chew had testified[61] that Sintalow remained liable to Jiwa and Bellows for the orders placed for the aforesaid items.

62 Sintalow also relied on *Aero-Gate Pte Ltd v Engen Marine Engineering Pte Ltd* [2013] 4 SLR 409 ("*Aero-Gate*") to support its argument that it had entered into binding contracts with Jiwa and Bellows to purchase the AFA GV and Thermosel expansion joints. In *Aero-Gate*, the High Court held a defendant in breach of a contract which had been constituted by way of a purchase order (*Aero-Gate* at [51]).[62]

63 As for the solenoid valves, CV couplings and special rubber sealings itemised at [60] above, Sintalow pointed out that Chew had explained[63] that Sintalow had already procured the relevant parts and were waiting to modify those parts to create those three items ordered by OSK.[64] Sintalow pointed out that OSK's own summary sheet, which highlighted the maximum number of stock of the Products in Sintalow's inventory, showed that Sintalow did not purchase (as indicated by the inventory of stock) CV couplings. Yet, it was not disputed that throughout the MBS Project, Sintalow did supply and deliver (and OSK accepted) a number of CV couplings.[65] Similarly, while OSK's same inventory table did not reflect any "purchases" (stock) of special rubber sealings

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60 PCS at para 121.

61 NE (4 June 2019), pp 112–114.

62 PCS at paras 121–123.

63 NE (4 June 2019), pp 116–117.

64 PCS at para 130.

65 PCS at para 131; see Plaintiff's Core Bundle Vol 2, Tab A.

by Sintalow, it was not disputed that Sintalow did deliver (and OSK accepted) a number of special rubber sealings.[66]

64 Sintalow submitted that it was highly inaccurate for OSK to rely on Sintalow's inventory lists to conclude that Sintalow was not ready, willing or able to supply the excess supply.[67] First, the unassembled items referred to in [63] would not feature in Sintalow's inventory. This would apply particularly to the special rubber sealings. In any event, as those were manufactured specifically for the MBS Project, they were not typical products carried by Sintalow.[68] Secondly, Bellows, the supplier of Thermosel expansion joints, shares the same premises as Sintalow and maintains its own inventory list. Hence, Sintalow did not keep stock of that item.[69] Thirdly, Sintalow's inventory list only captures a year-end snapshot of the quantities of products in its warehouse. Therefore, the inventory lists would not capture the fluctuations in quantities throughout the year.[70]

65 In any event, Sintalow submitted, OSK did not adduce any evidence to show that Sintalow would not have been able to procure the relevant products ordered by OSK. Chew had unequivocally stated in his AEIC that "even in the rare situation where the suppliers delivered the relevant products late to Sintalow, making it challenging for Sintalow to meet the contractor's delivery schedule, Sintalow would go out of its way to expedite the delivery to meet the

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66 PCS at para 132; see Plaintiff's Core Bundle Vol 4, Tab A.

67 PCS at para 134.

68 PCS at paras 135–136.

69 PCS at paras 137–138.

70 PCS at para 139.

delivery schedule, even if it meant paying additional expedited shipping fees out of its own pocket".[71]

66 With regard to OSK's complaint that some products were not locally manufactured but came from China (see [39] above), I accepted Sintalow's submission that the issue should have been raised at the trial on liability and not at the assessment stage. The origin of the P Traps, S Traps and AFA products is wholly irrelevant at this stage. With regard to the origin of the CV couplings, it was held in the HC Judgment (at [130]) that there was no guarantee that the product would be made in Germany rather than Singapore. In any case, it was Chew's evidence[72] that the invoices from Shanxi, China did not show that the P Traps and S Traps were manufactured in China. Rather, all they meant was that the castings were made there and were then imported into Singapore for modification into P and S Traps. Cost-wise, this process allowed for the manufacture of these products at a much cheaper cost as compared to the German-made product.

The decision

67 It is this court's view that *prima facie*, pursuant to s 50(3) of the SOGA, Sintalow would be entitled to loss of profits for OSK's failure to take delivery of the products it had ordered. The measure of damages would be the difference between the contract sale price to OSK and Sintalow's purchase price for the products. On this point, I note that the parties are at odds. Sintalow's case is that

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71 CKH at para 124.

72 NE (3 June 2019), pp 69–71.

it is entitled to loss of gross profit (or loss of revenue)[73] whereas OSK submits that Sintalow is only entitled to loss of net profit, citing *Transocean v Offshore International Ventures Ltd v Burgundy Global Exploration Corp* [2013] 3 SLR 1017.[74]

68 The court's function is to determine if there are any circumstances that would preclude Sintalow from claiming its loss of profits and, if there is nothing to preclude such a claim, then to determine if the measure of loss should be gross profit or net profit. Where some of the products had no available market (as Chew testified), the burden is on Sintalow to prove that as a fact.

69 To assist this court in the assessment hearing, Sintalow's solicitors had produced separate bundles of documents (agreed to by OSK) for the four products ordered by OSK that were the subject of the assessment namely: valves orders (volume1), Duker Hubless and new Duker orders (volume 2), cross tees orders (volume 3) and rubber sealing orders (volume 4).

70 In addition to the four volumes of documents referred to at [69] above, Sintalow produced nine other volumes of documents (the agreed bundles) comprising, *inter alia*, Sintalow's placement of orders to its suppliers in respect of OSK's orders, Sintalow's price lists for its products, the quotations and/or invoices Sintalow issued to OSK, OSK's material order forms to Sintalow, Sintalow's delivery forms to OSK, as well as correspondence between Sintalow and OSK and/or between Sintalow and its suppliers. The documentation was comprehensive and exhaustive.

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73 PCS at para 153.

74 DCS at para 170.

71 Before I consider Sintalow's various heads of claim, I will first address a number of OSK's submissions.

72 The first was that Sintalow had chosen not to produce any documentary evidence (apart from that relating to the P Traps and S Traps) to substantiate the change in standards by PUB that prevented Sintalow from using or selling in Singapore OSK's excess products.[75] OSK added that any change in standards would not have affected the sale of the excess products for construction projects as Sintalow itself had taken the position that the excess products were useable for various projects until as late as 2020.[76]

73 In my view, OSK should have but did not cross-examine Chew on the lack of literature pertaining to change(s) in PUB specifications for pipes subsequent to the award of the MBS project to OSK. Not once was Chew questioned on the issue. Neither was it put to Chew that there had in fact been no change in PUB's specifications. This was essential so as to ensure that Sintalow would have an opportunity to answer the alleged omission. OSK first did this only in its closing submissions, but that is too late in the day under the rule in *Browne v Dunn* (1893) 6 R 67 and is unfair to Sintalow

74 OSK, in its closing submissions, also made much of the fact that Sintalow had allegedly failed to mitigate its loss by not selling the excess products when there had been an available market for the products. Indeed, OSK's submissions dwelt *in extenso* on Sintalow's alleged failure to mitigate its loss.

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75 DCS at para 121.

76 DCS at para 123.

75 It was Sintalow's case (based on Chew's testimony) that there was no available market for the excess products for the reasons set out earlier at [30] and [31]. OSK did not produce any evidence to counter or rebut Chew's testimony.

76 With regard to mitigation, Sintalow cited the following extract from *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) at para 22.106:[77]

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77 PCS at para 163.

> …the *rule* as to mitigation by the claimant is, on closer examination, made up of three different, but interconnected, sub-rules. These are:
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> (a) First rule: the claimant must take all reasonable steps to mitigate the loss to itself consequent upon the defendant's breach of contract and the claimant may not recover damages for any such loss which it could have avoided but, through its unreasonable action *or* inaction, failed to avoid. That is, the claimant cannot recover damages for reasonably avoidable loss.
>
> (b) Second rule: where the claimant *has* taken reasonable steps to mitigate the losses to itself consequent upon the breach of contract by the promisor-in-breach, it may recover for any losses incurred in so doing. This is the case even if the resulting damage amounts to consequential loss that is greater than it would have been had the mitigating steps not been taken. That is, the claimant can recover for loss incurred in reasonable attempts to minimise damage, and this follows as a corollary to the first rule above.
>
> (c) Third rule: where the claimant has taken mitigatory steps, should such steps be successful, the promisor-in-breach will only be liable for the claimant's net loss – that is the claimant's loss as lessened. So the claimant may not recover for loss that has actually been avoided.

77 Reliance was also placed by Sintalow on the Court of Appeal's holding *in Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd and another* [2008] 2 SLR(R) 623 ("*Robertson Quay*").[78] I refer to the second paragraph of the headnote accompanying that decision:

> However, the law did not demand that the plaintiff proved with complete certainty the exact amount of damage that he had suffered. A court had to adopt a flexible approach with regard to the proof of damage. Different occasions might call for different evidence with regard to certainty of proof, depending on the circumstances of the case and the nature of the damages claimed. The correct approach that a court should adopt was

78 PCS at para 151.

> that where precise evidence was obtainable, the court naturally expected to have it, but where it was not, the court must do the best it could. A plaintiff could not simply make a claim for damages without placing before the court sufficient evidence of the loss it had suffered even if it was otherwise entitled in principle to recover damages. On the other hand, where the plaintiff had attempted its level best to prove its loss *and* the evidence was cogent, the court should allow it to recover the damages claimed. The only guideline was that the plaintiff must adduce before the court the most cogent evidence of loss available in the given circumstances.

78 Reliance was also placed by Sintalow on the following holding from *Tan Soo Leng David v Lim Thian Chai Charles and another* [1998] 1 SLR(R) 880 ("*Tan Soo Leng David*").[79] I refer to the first paragraph of the headnote accompanying that judgment:

> The rule of mitigation of damages did not require the innocent party to do more than was reasonably required to stem the loss. The party in default had no right to be astute in criticising the adequacy of the mitigating steps taken by the innocent party. …

79 Sintalow further cited the following passage from *The "Asia Star"* [2009] SGHC 91 (at [65]) in support of its position:

> …mitigation principles do not require the injured party to incur extraordinary expenditure or act otherwise than in the ordinary course of business.

80 On appeal by the shipowners in that case, the Court of Appeal reaffirmed the above principle (see *The "Asia Star"* [2010] 2 SLR 1154) and held (at para 1 of the headnote):

> The duty to mitigate had its limits. It could not oblige an aggrieved party to incur great expense or put itself to great inconvenience in stemming the loss resulting from the

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[79] PCS at para 165.

> defaulting party's breach. What amounted to too great an expense or too great a risk of the aggrieved party's money was a question of fact. …

81 Relying on the various cases cited above, Sintalow argued that it had proven the loss and the damages it claimed as (i) it had placed the relevant orders with the principal suppliers and it was liable to pay such principal suppliers (regardless of whether Sintalow had actually made payment), and (ii) Sintalow was unable to sell (most of) the excess products given that there was no available market.[80]

82 As indicated at [67] above, this court's decision is premised on s 50 of the SOGA being applicable, and, in particular, s 50(3). I am also mindful of Sintalow's duty to mitigate its loss in accordance with the three rules set out at [76] above. Sintalow cannot recover damages for avoidable losses, but so long as Sintalow has taken reasonable steps to minimise its loss, it cannot be faulted if the consequential loss it suffers is greater than if no mitigating steps had been taken. In addition, echoing the Court of Appeal's holding in *Robertson Quay* set out at [77] above, Sintalow is not required to prove with complete certainty the exact amount of damage that it had suffered. A court has to adopt a flexible approach with regard to the proof of damage. Different occasions might call for different evidence with regard to certainty of proof depending on the circumstances of the case and the nature of the damages claimed. The correct approach that the court should adopt is that where precise evidence is obtainable, the court would expect to have it, but where it is not, the court must do the best it can with the evidence it is presented with. As was noted in *Tan Soo Leng David,* the party in default has no right to be astute in criticising the

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80 PCS at para 156.

adequacy of the mitigating steps taken by the innocent party. The touchstone is that of reasonableness in the steps taken by Sintalow to mitigate its loss.

83 At the outset, I accept Sintalow's submission that OSK cannot rely on Sintalow's inventory lists to support its submission that Sintalow either (i) failed to disclose all the sales it made of the excess products or (ii) it did not have the quantities of the products ordered by OSK. Save for the finding below at [88], I accept Sintalow's explanation that its inventory lists would only capture the inventory at its warehouse at a particular date/time and that the stocks would fluctuate periodically.

84 In my view, save as regards the findings at [88] below, OSK cannot allege that Sintalow was unwilling or unable to deliver the products when OSK was the party that failed to take delivery and there were no instances where Sintalow *did not deliver* what OSK requested (as Mdm Oh admitted, and accepting her testimony that delivery from Sintalow was sometimes late).[81]

85 It was Chew's evidence that OSK refused to take delivery of the following items:[82]

S/n	**Description**	**Amount (S$)**
1	Duker Hubless orders	887,912.25
2	Additional Duker orders (see the HC Judgment at [120])	476,291.00
3	Excess valves orders	788,230.30

81 NE (6 June 2019), p 259 at lines 8–23.

82 CKH at para 172.

4	Cross tees orders	64,943.97
5	Rubber collar orders	5,912.40
6	Less: Products sold to third parties	(253,910.71)
7	Less: Products which were scrapped	(31,787.00)
Total:		**1,937,592.21**

86 In the alternative, Chew presented a measure of loss equal only to the loss of profits in respect of the Products which OSK refused to take delivery of:

S/n	**Description**	**Amount (S$)**
1	Duker Hubless orders	330,217.80
2	Additional Duker orders (see the HC Judgment at [120])	269,171.72
3	Excess valves orders	278,212.33
4	Cross tees orders	42,783.81
5	Rubber collar orders	5,912.40
Total:		**926,298.06**

87 The spreadsheets at exhibit CKH-6[83] of Chew's AEIC clearly state the unit cost price for each product OSK was liable to pay Sintalow for the purpose of calculating Sintalow's loss of profits. This puts paid to OSK's contention that

[83] See 9AB 5607–5671.

Sintalow did not produce evidence of its cost price for various products. It should be noted that OSK's counsel did not challenge the accuracy of the figures in Chew's exhibit CKH-6 during cross-examination.

88 However, it was also a finding at [120] and [123] of the HC Judgment (which was affirmed at [118] of the CA Judgment, Sintalow not having appealed against the trial judge's finding of fact) that Sintalow was unable to supply some Duker Hubless pipes or cross tees ordered by OSK. There was a further finding (at [123]) of the HC Judgment that Sintalow placed an order for 1,000 cross tees on 1 July 2008 despite having received OSK's letter dated 26 May 2008 requesting that Sintalow put the order on hold until further notice. The trial judge found that Sintalow acted unreasonably in placing the further order for cross tees when OSK had already indicated that it no longer wanted them. It also showed that Sintalow did not have sufficient stock to fulfil OSK's order of 1,660 cross tees.

89 I note that Chew did not address the above findings in his AEIC, and that Sintalow, in its closing submissions,[84] simply asserted that this was an issue of liability that OSK cannot raise at the assessment stage. In the light of the findings in the HC Judgment at [120] and [123] which were affirmed in the CA Judgment, I reject Sintalow's submission.

90 There has to be a reduction in the damages awarded to Sintalow to account for the Duker Hubless pipes which stock Sintalow did not have to deliver to OSK as well as for the 1,000 pieces of cross tees it should not have ordered.

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[84] PCS at paras 109–116.

91 With regard to the Duker Hubless pipes, for DH2 size 100mm (4") pipes, Sintalow ordered 12,806 pieces from its suppliers, against OSK's order for 13,500 pieces.[85] The shortfall in the pieces ordered was 694 pieces. Sintalow charged OSK $37.19 per piece for this product amounting to $25,809.86 for 694 pieces. This sum should be deducted from Sintalow's claim in the light of [120] and [132] of the HC Judgment.

92 As for cross tees, Sintalow placed an order for 1,000 cross tees with its supplier, and charged OSK $41 (price discounted by 41.43%) per piece.[86] This amounted to a total of $41,000 which should be deducted from Sintalow's claim in view of [123] of the HC Judgment (set out at [88] above).

93 Consequently, the figure in item 1 at [85] above of $887,912.25 should be reduced to $862,102.39 ($887,912.25 less $25,809.86) and the figure in item 4 of $64,943.97 should be reduced to $23,943.97 ($64,943.97 less $41,000).

94 Similarly, there should be a corresponding reduction in the figures for Sintalow's loss of profits in [86] for items 1 and 4. Based on Sintalow's cost price for DH2 size 100m (4") pipes of $28.16,[87] Sintalow's loss of profits figure should be reduced from $330,217.80 to $323,950.98 ($330,217.80 less $6,266.82 (being 694 x $9.03, the profit margin obtained by subtracting the cost price of $28.16 from the contract price of $37.19)). For the cross tees in item 4, the reduction in profit is based on Sintalow's cost price of $13.99 for the cross

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85 Plaintiff's Core Bundle Vol 2, Tab A.

86 Plaintiff's Core Bundle Vol 3, Tab A.

87 Plaintiff's Core Bundle Vol 2, Tab A.

tees.[88] Therefore, Sintalow's profit per unit would have been $27.01 (being the contract price of $41.00 less the cost price of $13.99). For 1,000 pieces, Sintalow's profit would have been $27,010 thereby reducing the profit figure from $42,783.81 to $15,773.81 ($42,783.81 less $27,010).

95 It would be appropriate at this juncture to address OSK's submissions challenging the quantum of Sintalow's claim. In its closing submissions, OSK had relied on Sintalow's quotation to Zenith to determine the 2012 market price and calculate Sintalow's loss of profits.[89] Sintalow had alleged (see [20] above), and OSK disputed, that OSK controlled Zenith. In my view, the fact that OSK was able to obtain a copy of Sintalow's quotation to Zenith lends credence to Chew's allegation that OSK was indeed involved to some extent with Zenith's subcontract for the installation of plumbing and sanitary systems at the Hospital.

96 As for OSK's using Sintalow's quotation dated 14 December 2012 to Zenith as the premise for its submissions, Chew pointed out that its quotation was only meant to kick-start negotiations between the parties.[90] I accept that such a practice is usual in the construction industry; it was in fact how the parties arrived at the contract for Sintalow to supply the Products to the MBS Project.

97 As observed at [52] above, OSK relied heavily on Sintalow's evidence and documents for its case. One of OSK's arguments concerned Sintalow's failure to mitigate its loss by selling the excess products to Zenith.[91] However,

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88 Plaintiff's Core Bundle Vol 3, Tab A.

89 DCS at paras 134–139.

90 PCS at paras 101–102.

91 DCS at para 61.

it does not lie in OSK's mouth to make this submission as it ignores Chew's testimony (see [18]–[20] above) that OSK thwarted Sintalow's attempt to mitigate its loss by not approving Sintalow's quotation to Zenith to supply the excess Duker Hubless pipes/fittings and valves for the Hospital project.

98 In his AEIC, Chew deposed that OSK was liable for $788,230.30 for the Excess Valves it failed to accept (see [14] above). OSK did not produce any evidence to refute Chew's figures. I therefore accept Sintalow's figure of $788,230.30.

99 Similarly, I accept Sintalow's figure of $5,912.40 for the rubber collars and additional Duker orders. Taking into account my prior observations at [88] to [93], I modify Chew's figures at [85] above as follows:

S/n	**Description**	**Amount (S$)**
1	Duker Hubless orders	~~887,912.25~~ 862,102.39
2	Additional Duker orders (see the HC Judgment at [120])	476,291.00
3	Excess valves orders	788,230.30
4	Cross tees orders	~~64,943.97~~ 23,943.97
5	Rubber collar orders	5,912.40
6	Less: Products sold to third parties	(256,764.71)
7	Less: Products which were scrapped	(31,787.00)

Total:	**1,867,928.35**

100 Similarly, I adjust the net profit figures in the table at [86] as follows:

S/n	Description	Amount (S$)
1	Duker Hubless orders	~~330,217.80~~ 323,950.98
2	Additional Duker orders (see the HC Judgment at [120])	269,171.72
3	Excess valves orders	278,212.33
4	Cross tees orders	~~42,783.81~~ 15,773.81
5	Rubber collar orders	5,912.40
Total:		~~**926,298.06**~~ **893,021.24**

101 In OSK's submissions, it contended that Sintalow should be entitled to net, not gross profits. Sintalow had, in its opening statement, relied on the case of *Legend Building Supplies (Pte) Ltd v Chon Hwa Construction Pte Ltd* [2000] SGHC 217 ("*Legend Building Supplies*") for its claim for loss of revenue. In that case, the High Court awarded damages to the defendant's failure to take delivery of the total quantities of goods purchased from the plaintiffs under two contracts. The plaintiff disposed of the undelivered balance of the goods by selling them to third parties. The plaintiff claimed and was awarded damages which represented the loss of revenue it suffered under both contracts.

102 In its submissions, OSK contended that Sintalow's reliance on the above case was misplaced.[92] OSK argued that the issue as to the applicable measure of damages in relation to the sale of goods had not been raised as the defendant did not mount any objection to the plaintiff's evidence of its losses.

103 OSK's reading of the case is not quite accurate – what the court there said was that the defendant did not seriously dispute the plaintiff's evidence of its losses and mitigation thereof and hence, the court accepted the plaintiff's evidence (*Legend Building Supplies* at [51]).

104 In our case, apart from its lengthy submissions, OSK produced no countervailing evidence whatsoever to refute Sintalow's evidence on the steps taken in mitigation of its loss as well as the figures pertaining to its purchases from its suppliers and its sale prices to OSK. OSK cannot blow hot and cold at one and the same time. It had submitted that s 50 of the SOGA applies (see [53] above) and yet sought to argue that there were circumstances in which s 50(3) does not apply. Section 50(2) encapsulates the first rule in *Hadley v Baxendale* (1854) 9 Ex 341, which principle OSK did not dispute.[93] It is all very well for OSK to say *ex post facto*[94] that Sintalow would have been able to and should have determined and proven the cost price of the Products in order to arrive at the quantum of its profits. In my view, Sintalow has done so as OSK did not produce any evidence to the contrary.

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92 DCS at paras 164–166.

93 DCS at para 168.

94 DCS at para 172.

105 Consequently, I accept Sintalow's loss of profit figures as revised, set out at [100] above and the total sum of $893,021.24. It bears noting that when Sintalow paid its suppliers, the latter must have factored in their gross profit margin. There is no reason why Sintalow cannot similarly claim for loss of revenue which represents their gross profits. I would add that Sintalow's quotations or price lists for 2012 do not necessarily reflect the market price of the Products (contrary to what OSK sought to argue). Both the quotations and price lists were still subject to negotiations between the prospective and actual buyers and Sintalow.

106 Accordingly, I award judgment to Sintalow as follows:

(a) The sum of $30,988.04 (see [49] above) and

(b) Damages for loss of profits in the sum of $893,021.24;

(c) Interest at 5.33% per annum on both sums from the date of the writ (8 August 2012) until payment.

107 The court will hear arguments form the parties on costs on a date to be fixed by the Registrar.

Lai Siu Chiu
Senior Judge

Wong Wendell, Ang Xin Yi Felicia and Teo Ying Ying Denise
(Drew & Napier LLC) for the plaintiff;
Andrew Ang Chee Kwang, Tan Jin Jia Andrea and David Marc Lee
(PK Wong & Associates LLC) for the defendant.
