IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 122

Suit No 155 of 1987

Between

Kuo Chian Private Limited

… *Plaintiff*

And

Philips Project Development
(Singapore) Private Limited

… *Defendant*

GROUNDS OF DECISION

Version No 1: 11 Sep 2026 (01:05 hrs)

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Kuo Chian Private Limited v Philips Project Development (Singapore) Private Limited

[1992] SGHC 122

Suit No 155 of 1987
Lai Siu Chiu JC
07 May 1992

1 **Judgment:**

2 Coram : Lai Siu Chiu JC.

3 **Cur Adv Vult**

4 JUDGMENT

5 The Excelsior Hotel project.

6 The plaintiffs are electrical contractors dealing in sound and CATV/MATV (central antenna television/master antenna television) systems since 1975. In 1983 they were subcontractors of the defendants for the Excelsior Hotel (the Hotel) for the installation of the Hotel's public address and firemen intercom systems. The contract between the parties is evidenced in the plaintiffs' quotation dated 23 May 1983 (AB1-2) and in the defendants' purchase order no.0169 (AB3) dated 20 June 1983. The defendants did not accept all but only five items in the plaintiffs' quotation and they were:-

7 (i) to supply and install cables and conduits for 283 guestrooms $33,960

8 (ii) to supply and install cables and conduits for general areas $12,915

9 (iii) to supply bedside panels complete with switches anodising and engravings $26,885

10 (iv) to supply and install 2"x 2" trunking/conduits for firemen intercom system including flameproof cable supplied by the defendants $7,590

11 (v) Installation of firemen handset/ cabinet $2,760

12 Total $84,110 _____

13 AB3 contained these words "includes installation of all loudspeakers volume controls and its termination & testing".

14 The plaintiffs were given by the defendants a plan showing the electrical services lighting layout (AB150A) of the Hotel.

15 According to the plaintiffs' managing director Tan Soo Lip (PW1), whilst the plaintiffs were carrying out the works for the Hotel, they received verbal instructions from time to time on site from the defendants' site supervisor or engineer. Arising out of these instructions and the additional or variation works resulting therefrom, the plaintiffs rendered the defendants several invoices for sums over and above the contract price of $84,110. Two of these invoices were invoice no.624 (AB23) and invoice no.642 (AB32); the defendants refused to pay either invoice which particulars are as follows:-

16 Date Invoice Amount Particulars

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17 24.5.84. 624 1,708.05 a) Supply control cables in conceal

18 1,708.05 b) Supply microphone cable in conceal

19 1,389.60 c) Supply 1" x conceal conduit

20 c/f $4,805.70

21 b/f $4,805.70

22 24.8.84. 642 To cost of supplying the following:-

23 $400.00 a) Metal box 20' x 20" x 3" with grey colour finish for FP 200 cables junction box.

24 $320.00 b) Cost of labour to jointing the FP 200 cables at 3rd storey and fire command centre.

25 $180.00 c) Conduit box 150mm x 108mm x 50mm for 100v jack socket panel and volume control. _____

26 Total $5,705.70 _____

27 For invoice no. 624, PW1 explained that the plaintiffs' quotation (AB1-2) only covered the installation of star quad cables for radio and taped programmes and not microphone cables.

28 In regard to invoice no. 642, PW1 said the defendants gave cable lengths which were too short; they thought 100 metre lengths were sufficient to reach the 21st storey from the control room on the 1st storey; he said the defendants

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omitted to calculate the podium areas which required 70 metres. The result was the 100 metre length cables only reached up to the 4th storey; hence the plaintiffs' claim for joining the cables, for the labour involved as well as for supplying the metal/junction box and jack box to make the connections.

29 Sohindar Mohan Singh (DW1) the then manager of the defendants' electro-acoustics department testified that the reason for the defendants' refusal to pay invoice no. 624 was because the microphone points were the same as the original tender specifications. The defendants' stand was that the work involved was part and parcel of the original contract for the public address (P.A) system and not an addition as the defendants alleged. DW1 contended that a P.A. system is not complete without microphones and right from the start, it was clear that three microphones had to be installed.

30 DW1 further alleged and which was admitted to by PW1 in cross-examination, that the plaintiffs had agreed in their letter dated 24 May 1984 (AB22) to delete the amount ($4,805.70) in invoice 624 from another invoice (no.616) in consideration for which the defendants issued variation order no.5213 (AB21) for $4,947.20 for the balance sum claimed in invoice 616; the plaintiffs had therefore breached the agreement in reviving their claim for $4,805.70.

31 PW1's explanation was that the defendants had agreed to cover the item by other items but in the end they did not. In this connection it is useful to look at variation order no.5213; it states:-

32 (i) to supply & install additional trunking 2"x 3" (110 m) $1,485.00

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33 (ii) to supply & install additional conduit 1"(146m) $ 905.20 (iii)to supply & install additional cable for room speaker from panel to speakers. $2,485.00

34 (iv) alteration for room floor slab programme point from 15th to 20th storey -- 10m x 1"conceal conduit. $ 72.00

35 Total: $4,947.20 _____

36 As for invoice no.642, DW1 said that the defendants did not approve the claim as it related to joining of cables which was part of the plaintiffs' contract for running and terminating the cables. He explained that flameproof cables come in standard lengths and there are only two such suppliers one German (Cable Metal) and the other Japanese (Fujikura) and this fact would be known to the plaintiffs as electrical contractors. In this case the defendants used FP200 cables which fact was known to the plaintiffs at the time they submitted their quotation (AB2). Further the unit price charged by the plaintiffs for the three items stated in this invoice was exorbitant; for the metal box the defendants' engineer opined that a more reasonable figure would be $115 instead of $200. Similarly, a more reasonable figure for the labour charge would be $100 instead of $320; DW1 said it is also unusual for a contractor to charge for labour. In regard to the last item, DW1 said that a more reasonable figure would be $18 instead of $30. If the defendants had to pay invoice no. 642, DW1 said that a more reasonable figure should be $438 instead of $900.

37 DW1 confirmed PW1's evidence that the plaintiffs had been a contractor of the defendants since the construction of Changi Airport's Terminal 1 in 1979. DW1 went on to say however that over the years the plaintiffs developed a

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reputation for making exaggerated claims and the defendants encountered problems with them over such projects as Gillman Heights which resulted in the defendants incurring heavy losses. Even for the Changi Airport project, DW1 testified that the plaintiffs' claim for variations were higher than all the other contractors' and the defendants' project managers generally had a common complaint that the plaintiffs were difficult to work with. For the Hotel, DW1 had been advised by the defendants' sales manager Eugene Chan (who was not called as a witness) that the defendants' purchase order (AB3) had been given on a rather generous basis; it included all microphones and no variations should be allowed. Further, the then project manager Henry Tan (who also did not testify) told DW1 that whilst the plaintiffs made demands for extra work done they did not give the defendants credit for items which were deleted from the original contract. As an example DW1 referred to the firemen intercom system which was changed from a flush mount to a surface mount installation thus involving less work for the plaintiffs. This was pointed out to the plaintiffs in the defendants' letter dated 10 May 1986 (AB132) signed by Henry Tan.

38 The Raffles City project.

39 Before the plaintiffs had completed the Hotel project, the defendants awarded them another contract under the defendants' purchase order no. 5292 (AB17) dated 16 March 1984 for the Raffles City Tower C (Tower C) for the following items:-

40 (i) to supply and install coaxial cables in PVC conduits and/or cable trays including the termination and connection of the TV outlets and also the connection of the TV outlets to splitters/amplifiers in the electrical riser for

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Tower C (1250 nos). This should include the hacking through of walls and floors as and when required, and inclusive of all incidentals. $116,250

41 (ii) to supply and install in PVC conduits for all required rooms in Tower C with a) 10 pair cables from bedside panel to relay box ; b) 4 pair cables from bedside panel to TV unit; c) 2 pair cables from TV unit to the bathroom speaker via a volume control. This also includes the installation of said bathroom speaker and volume control,including hacking through of walls and floors as and when required and inclusive of all incidentals. $113,750

42 Total $230,000 _____

43 PW1 testified that the plaintiffs were awarded the Tower C contract pursuant to the quotation (AB11) which he submitted to DW1 on 14 March 1984 in these terms:-

44 a) supply and install coaxial cables in PVC conduits and/or cable trays including the termination and connection of the TV outlets and also the connection of the TV outlets to splitters/amplifiers in the electrical riser for Tower C (1250 nos). This should include the hacking through of walls and floors as and when required. $116,250

45 Install 116 splitters and 20 amplifiers at riser $ 24,208 $140,458 b) supply and install in PVC conduits for all required rooms in Tower C with

46 (i) 10 pair cables from bedside panel to relay box.

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47 (ii) 5 pair cables from bedside panel to TV unit. (iii)2 pair cables from TV unit to the bathroom speaker via a volume control. This also includes the installation of said bathroom speaker and volume control. $113,750

48 PW1 testified that at the time the defendants requested him to quote for the Tower C project, they provided him with drawings upon which he based his quotation. He was instructed by their senior project manager Lee Chow Shiong (PW2) to quote based on the drawings (AB153-154) times 23 rooms per floor from 7th to 65th storeys. AB153 (exh P7) was for Tower C whereas AB154 was for Tower A for which tender the plaintiffs were unsuccessful. PW1 claimed that he told PW2 that as the conduit pipes could not be seen being buried in the concrete slabs, he was not able to quote. He alleged PW2 told him to follow exh P7 which yellow markings were supposedly the conduits. He said he had only one week in which to submit his quotation. There was a prior meeting at the defendants' office where he along with other contractors were briefed on the scope of work required for Tower C. At that briefing PW1 (under cross-examination) said he received from PW2 a Quotation to Quote (exh D1) signed by PW2 which included the following items:-

49 `Introduction The work comprises the supply of labour and materials for the cabling work, including all necessary incidentals of the audio-video system for Raffles City. Onus for Investigation Contractors are required to investigate the site conditions and shall include all contingencies in their pricing.'

50 After the briefing he visited the site together with other contractors accompanied by PW2 and that was when he made his observations about the concealed conduit pipes to PW2 whereupon PW2 handed to him exh P7 and AB154.

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51 PW2 who left the defendants' services in July/August 1984, said in his evidence that he could not recall what drawings had been given to PW1 at the time the plaintiffs were invited to tender nor could he remember what instructions he gave or whether he touched on exh D1. He did say however that 'Onus for Investigation' was a standard clause in tender documents and if the conduits were concealed this fact would have been told to the subcontractors at the briefing. As an engineer he expected contractors to follow documents and drawings as much as possible but he would not spell out the nuts and bolts nor in detail what is necessary to do a conduit run. If he had given drawings to show conduit runs and trunking and the number of light fittings, he expected the contractor to follow the drawings and make provision for nuts and bolts and not make claims for such items if they had been omitted. PW2's evidence does not help to advance the plaintiffs' case that they were misled by exh P7 on the way the conduits were run.

52 According to PW1 the plaintiffs commenced work on Tower C on 3 May 1984 and they completed it sometime in November 1985; he produced his handwritten notes (exh P3) in support of the dates. The plaintiffs' work was checked daily by the defendants' supervisors Alan Fan Lee Sheng (DW2) and Gerald Yap. In support of this contention, PW1 produced the plaintiffs' report sheets (AB46-100) which showed the plaintiffs' inspection of completed works between the dates 27 May and 28 June 1985 which works were also inspected by DW2 sometime in August 1985 who then countersigned the report sheets.

53 About a year after the plaintiffs had installed the cables, some were found to be damaged by unknown persons. PW1 alleged that he informed the defendants who instructed him to repair the damaged cables. The plaintiffs did so and rendered invoice no.0690 (AB107) to the defendants in the sum of

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$7,623; the defendants refused to pay the invoice on the ground that no such repair works were done.

54 Similarly, a year after they had been installed, the conduit pipes in the riser were found to have been damaged by unknown persons. This was told to PW1 by the defendants who requested him to have them replaced. The plaintiffs raised invoice no.0698 for $3,150 for the replacement conduit pipes. The defendants only agreed to and did pay $1,050 on the invoice disputing the balance for $2,100 on the ground that the alleged work could not be verified.

55 PW1 alleged that the room cables were also damaged by unknown persons and the plaintiffs accordingly replaced them and rendered invoice no.0699 in the sum of $2,264.40 to the defendants. The defendants refused to pay two items in this invoice stating that the fault lay with the plaintiffs in running cables which were too short.

56 The plaintiffs rendered yet another invoice to the defendants outside the original contract, namely invoice no.0708 for the assembly of the defendants' speakers (exh P1) which were given to the plaintiffs in kit form requiring the plaintiffs to route the speakers and the transformers onto the control panels and to solder the speaker points to the transformers before installing them. I should add that invoice no.0708 also included the plaintiffs' charges for cable replacement and repair which the defendants disputed.

57 By far the largest additional claim of the plaintiffs is that reflected in invoice no.0697 (AB118) in the sum of $85,400 which breakdown is as follows:-

58 1. Run additional 6.4m of coaxial cables per room. 8,000m $46,400

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59 2. Run additional 4m of 10 pairs cables per room. 5,000m $19,500

60 3. Run additional 4m of 4 pair cables per room. 5,000m $ 7,500

61 4. Run additional 9.6m of 2 pair cables per room. 12,000m $12,000 Total$85,400 _____

62 PW1 testified that based on the drawing at exh P7 the estimated cable lengths were insufficient and the plaintiffs had to use extra cables; AB118 represented the difference between the conduit pipes' positions as shown in exh P7 and their actual positions as ascertained by the plaintiffs in the course of laying the cables. The conduit pipes were not laid by the plaintiffs but by the main electrical contractor. PW1 produced in court his calculations (exh P5) of the cable measurements required when he tendered based on exh P7. Halfway through the job, PW1 discovered that the cable lengths were insufficient. He then measured the site and found that the cable length required was 40% more than what the plaintiffs had estimated. He alleged that he informed Gerald Yap on site verbally and he also wrote to the plaintiffs subsequently in June 1985 (AB102). Gerald Yap's reaction was to tell the plaintiffs to proceed and not to waste time opening up the panels whilst the defendants did not reply to AB102. PW1 said he ordered the extra cables required from EB Communications (Far East) Pte Ltd producing the company's delivery orders (exh P2) in support thereof.

63 On the alleged shortfall in cables, DW2 in cross-examination said that he found drums of cables not in use abandoned on different floors by the plaintiffs' workers and even after he brought the matter up to the plaintiffs' supervisor Wong, he still found such drums of cables although to a lesser extent.

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It is significant that PW1 in his evidence agreed that the only reason he concluded that more cables were being used than he originally calculated (in exh P5) was because he ran out of cables. He further admitted that he had poor material control on site, a fact endorsed by DW2. PW1 also testified that only he was in charge of stock for the plaintiffs and yet according to DW2, he was never on site; DW2 only saw the plaintiffs' two site supervisors namely Wong and another Mr. Sek. PW1's absence from site, notwithstanding his denial, in particular his absence from weekly site meetings, is reflected in the defendants' letter to the plaintiffs dated 10 May 1985 (AB45). I am mindful that the basis for the parties' agreement on the agreed bundle AB1 to AB173 is that the parties agree to dispense with formal proof only, not that the contents are also admitted. PW1 under cross-examination sought to explain AB45 by saying that the site meetings did not involve him and even if he attended them, he had to 'wait outside' as a subcontractor. DW2 refuted PW1's evidence stating that subcontractors were allowed to attend site meetings held by the main contractor Ssangyong with the defendants and PW1 never attended the meetings. Added to that, it was PW1's own evidence that his workers collected the amount of cables required from the store and he not the site foreman was in charge of stock. I therefore accept the contents of AB45 to be true.

64 In support of their claim for the additional cables used, the plaintiffs called as their expert witness Gilbert Choo Koo Kok (PW3) a consultant electrical engineer. He gave evidence that at the request of the plaintiffs' counsel, he prepared his report (exh P4) dated 13 November 1991 based on exh P7, calculating the amount of cables required for the 1250 rooms in Tower C using a scale of 1 : 50. Under cross-examination he said he had assumed for his report that the drawing shown in exh P7 represented the tender drawing. He was also shown but not given, a copy of the cable routing plan for Raffles City (exh

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P6) for which the scale (not stated but agreed to by plaintiffs' counsel) was 1:100. PW3 said he assumed that exh P7 was half the scale of exh P6 and accordingly he used a scale of 1:50 for his calculations. It appeared that PW3's assumption was wrong and so were his calculations based on a scale of 1:50. DW1 did a comparison of the scale in exh P7 against that in exh P6 and said that the former was on a scale of 1:30 to the latter's 1:100 which on a visual comparison I accept as more probable than a scale of 1:50. PW3's evidence and report therefore are of little assistance to the court. I would add that DW1 in his evidence had also testified that another subcontractor who was awarded the contract for Towers A and B for the same work done by the plaintiffs was able to complete the work without claiming variations. That subcontractor (Chin Yong) had attended the briefing held by PW2 and although there is no direct evidence on the point, it can be assumed that the same drawings and instructions given to the plaintiffs were given to Chin Yong. PW1 agreed under cross-examination that he knew that exh P7 cannot be the right way of running conduit pipes but he did not take the trouble to find out whether it was. He claimed that he was only allowed one site inspection before he submitted the plaintiffs' tender which evidence DW1 refuted stating that arrangements had been made with Ssangyong to allow the defendants' subcontractors unrestricted access to the site and PW1 could have revisited the site before submitting his tender and could have verified whether the conduit pipes were run in accordance with exh P7. DW1 said that had the defendants known that the plaintiffs' quotation would be another $85,000, they would never have been awarded the contract. DW1 produced his own calculations (exh D2) on the cable requirements of the plaintiffs based on the measurements(computed on a three dimensional basis) shown in exhs P5, P7 and in D4. According to DW1, exh D4 is the same drawing as exh P6 save that it states the scale (1:100) which exh P6' does not and that exh D4 had 2 amendments which are not relevant to this dispute. Exhibit D2

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showed that the plaintiffs had provided enough cables for all except the 2 pair and 1 pair cables which showed a shortfall of 3.5 metres for each room.

65 The plaintiffs did not raise an invoice for the amount but in their letter dated 12 November 1986 (PB8) to the defendants they lodged a claim for $25,650 which they had earlier 'overlooked' together with another sum for $3,420 for dismantling and re-laying the corridor conduit pipes. PW1 explained that he initially took instructions from PW2 to lay the conduit pipes at a height of 2.37 metres. Subsequently he was instructed by DW2 to re-lay the pipes at 2.62 metres because the first laying blocked the ceiling contractor's job. He said that he told DW2 that the re-laying would involve additional labour and materials and the latter's response was that he should just proceed.

66 DW1 testified that PB8 was never received by the defendants, neither was the carbon copy meant for the defendants' managing director; the first time that the defendants saw the letter was when it was exhibited in PW1's affidavit in the plaintiffs' application for summary judgment against the defendants. The defendants resisted both claims on the ground that the alteration work was to rectify the plaintiffs' own wrong installation. PW1 had admitted under cross examination that he knew that laying the conduits at 2.37 metres contravened building regulations notwithstanding which he proceeded. PW2 could not remember whether he gave instructions to the plaintiffs to lay the conduit pipes at 2.37 metres. DW2 in his evidence explained that due to a lack of co-ordination on the part of the workers of the defendants with those of the ceiling contractor, the conduits originally laid by the plaintiffs were damaged by the ceiling contractor. He did not dispute the plaintiffs' claim for payment for the alteration works but because Gerald Yap not he, was authorised to approve payment, he requested the plaintiffs to refer to the former for any claims (see DW2's

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memorandum to the plaintiffs dated 1 March 1985 at AB40). As Gerald Yap was not called by either party to testify, DW2's evidence that Gerald Yap had agreed that the plaintiffs should be paid for the alterations could not be confirmed.

67 PW1 had agreed under cross-examination that the works in Tower C were handed over to the defendants at end November 1985. DW2 gave evidence that the items in AB46-100 relied upon by PW1 that the works were completed earlier, were not ticked by him but by the plaintiffs' Mr.Sek who wrote the comments before DW2 made his inspection. Only after the plaintiffs had corrected the defects as noted by Mr. Sek would DW2 make his inspection which he did on 16 August 1985. He testified that by that date the plaintiffs had completed work on the 43rd storey. DW2 had also said that he tested only the MATV co-axial cables after they were installed but not the other cables although he could see the ends of the 1 pair, 2 pair and 4 pair cables. He confirmed that he never received complaints from the plaintiffs that the conduit layout was different from what was in the plan nor that their cables had been cut and vandalised; indeed he received no complaints at all on his twice daily rounds of Tower C each round lasting 2+ to 3 hours.

68 The claim.

69 As the plaintiffs did not receive payment on invoices no.624 and 642, PW1 wrote a reminder to the defendants on 13 March 1986 (AB127) and at the same time addressed a separate letter (AB128) to them on the invoices for the variation works for Tower C. Two reminders for payment were sent by PW1 to the defendants on 16 April 1986 (AB130-131) before the latter replied on 10 May 1986 (AB132) rejecting the plaintiffs' invoices no.624 and 642 on the

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ground that 'they were part and parcel of the works ....in the original tender contract.'

70 On the variation works totalling $102,237 relating to Tower C, the defendants in another letter to the plaintiffs dated 12 June 1986 (AB133) approved payment only to the extent of $4,460.80 pointing out that the plaintiffs' contract comprised of the supply, labour and materials for the cabling work including all necessary incidentals of the audio video system. The defendants said that they had deducted a sum of $1,035 from the plaintiffs' contract sum because the latter had failed to install on certain floors some items of speakers and TV outlets.

71 After further exchange of correspondence between the parties, DW1 on 26 July 1986 (AB137A-C) wrote to the plaintiffs setting out the defendants' position on the outstanding invoices for both projects. In essence DW1's stand in AB137A-C was what he said in court which (concerning Tower C) was:-

72 (i) Invoice 0682 (AB101) for $3,800 -- the claim for repair of conduit pipes was excessive in proportion to the work involved, a sum of $2,800 was more reasonable.

73 (ii) Invoice 0690 (AB107) for $7,623 -- the claim for repair work to telephone cables was not approved because the work could not be verified.

74 (iii)Invoice 0697 (AB118) for $85,400 -- the claim for additional cables could not be entertained because the plaintiffs had been given ample opportunity to appraise the worksite and assess the amount of cables to be used and the work involved.

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75 (iv) Invoice 0698 (AB119) for $3,150 -- the first item ($2,100) for replacement of conduit pipes on 7 floors was not approved as the work could not be verified.

76 (v) Invoice 0699 (AB122) for $2,264 -- items 2 and 4 totalling $1,773.60 for replacement of 10 pair cables in 50 rooms could not be approved as the original cables ran by the plaintiffs were too short.

77 (vi) Invoice 0708 (AB125) for $4,890 -- items 2 to 5 totalling $637.20 for repair of 10 pair cables and broken volume controls in 21 rooms could not be approved because the completed work had not yet been handed over to the defendants and they remained the plaintiffs' responsibility. Item 1 for assembling 1181 pieces of exh P1 at $3.50 per piece was only approved at $2 per piece i.e. $2,362 instead of $4,133.50.

78 (vii)Invoice 0714 (AB129) for $1,035 -- the amount was deducted from the contract sum as the plaintiffs failed to carry out the work and the defendants engaged another contractor to complete it.

79 The plaintiffs in their response (AB138-138A) to AB137A-C maintained their stand in accordance with the evidence of PW1 and insisted on payment of $112,868.10. Further correspondence ensued between the parties with no result as each side maintained its respective stand. As earlier stated the defendants denied having received the plaintiffs' letter in PB8.

80 In January 1987 the plaintiffs commenced this action against the defendants claiming the sum of $141,903.60 based on the following invoices:-

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81 Invoice No. Amount 624 $4,805.70 642 900.00 0682 3,800.00 0690 7,623.00 0697 85,400.00 0698 3,150.00 c/f $105,678.70

82 b/f $105,678.70 0699 2,264.40 0708 4,890.50 Claim under PB8 29,070.00 Total: $141,903.60

83 The plaintiffs filed an amended statement of claim by leave of court to include an alternative claim that it was an implied promise that the defendants would pay the plaintiffs a reasonable sum by way of quantum meruit for the work done and materials supplied.

84 The amended defence generally repeated what had been stated by the defendants in their letter to the plaintiffs in AB137A-C save that where the defendants had agreed to make some payment on some invoices, the fact and the payment made was pleaded. As regards invoice no. 0697 for $85,400, the defendants contended that the contract was concluded on a lump sum basis or as DW1 described it on a turnkey basis, therefore the plaintiffs were not entitled to any extra payment for additional materials used. The plaintiffs' alternative claim based on quantum meruit was disputed for the same reason . Alternatively the defence contended that the sums claimed by way of quantum meruit were not reasonable.

85 The plaintiffs in their application for summary judgment were awarded the sum of $4,460 based on the defendants' offer as contained in AB137A-C namely:-

86 Invoice No. Amount 0682 $2,800.00 0698 1,050.00 0699 490.80 0708 120.00 Total: $4,460.80 rounded down to$4,460.00

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87 The balance of the plaintiffs' claim in dispute is therefore $137,443.60.

88 The findings.

89 A) The Excelsior Hotel project.

90 (i) Invoice no.624. On the evidence, I disallow this claim. Although Eugene Chan was not called to testify to the 'rather generous basis' upon which the defendants had issued AB3 to the Plaintiffs, I accept DW1's evidence that microphones are part of a P.A. system and the plaintiffs are not entitled to charge separately for installing the cables and conduits for the three microphones as their points were the same as the original specifications in AB150A. Further, although it was PW1's evidence that the plaintiffs' quotation only covered the installation of star quad and not microphone cables, the heading of the plaintiffs' quotation (AB1-2) stated 'Re: Proposed Public Address System For M/S EXCELSIOR HOTEL (PTE) LTD at Coleman Street/Hill Street.' Even if I am wrong in my view, the fact remains that the plaintiffs had agreed to withdraw this claim in consideration of the defendants' issuing a variation order (AB21).

91 (ii) Invoice no.642. This claim is also disallowed as the defendants' purchase order (AB3) clearly stated that the work included the installation of flameproof cables (FP200) to be supplied by the defendants which specifications and therefore lengths were known to the plaintiffs. Indeed it was admitted by PW1 in his evidence that joining of cables through a junction box was normal. He further said that whether joining was required depended on the length of the cables used which he knew in this case was 100 metres. PW1 should have provided for the contingency of joining the fireproof cables in his quotation and as he failed to do so, the plaintiffs cannot claim for it separately.

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92 The Raffles City project.

93 (i) Invoice no.0682. The plaintiffs' claim for the balance sum of $1,000 is disallowed. PW1 had conceded that this work was done pursuant to DW2's note (AB41) dated 22 March 1985 which included a comment (confirmed by DW2 in his evidence) that the plaintiffs had to re-run the conduits along the corridors instead of along the walls; therefore the works were corrections and not repairs as described in this invoice. Even if I am wrong in my finding the fact remains that the work was done before it was handed over to the defendants at end November 1985 and therefore the plaintiffs were still responsible for the same. I note that the defendants have in any event paid part of this invoice.

94 (ii) Invoice no.690. As it was PW1's own evidence that the works were done before the handing over to the defendants, no part of this claim can be allowed.

95 (iii)Invoice no.0697. This claim is disallowed. There is no evidence that the alleged shortage of cables was due to PW2's representations that the conduit pipes were run in accordance with exh P7 which proved to be incorrect. There is evidence however from DW2 which the plaintiffs not only did not rebut but which PW1 admitted, that the plaintiffs maintained poor material control added to which PW1 was never on site to check whether the cables which he released from the plaintiffs' stock were really utilised or left abandoned by his workers on various floors. Further, I accept DW1's evidence that his tables (exh D2) showed that PW1's initial calculations (exh P5) on the amount of cables required were quite accurate. From the evidence presented by both parties, one gains the distinct impression that although he was/is the plaintiffs' managing director, PW1 did not really take any trouble to involve himself with the day to day

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operations for either project. He seemed quite contented, having played his part in securing both contracts at what can be assumed to be at a reasonable profit margin to the plaintiffs, to leave it to his site supervisors to oversee the plaintiffs' actual work at both sites.

96 On the law, I agree with DW1's contention that the plaintiffs were awarded the contract (AB17) on a lump sum basis based on exh D1 which required the plaintiffs to include all contingencies in their pricing. It is trite law that in a lump sum contract, the contractor must provide everything indispensably necessary to complete the whole work and if he has been put to unexpected expense because of inaccurate quantities or drawings or such like, he cannot usually recover the expense by bringing an action for breach of an implied warranty that the plans, drawings etc are accurate or practicable. No such warranties are implied merely from the fact that these documents are submitted to the contractor for tender < Thorn v London Corporation(1) > . It is further to be noted that the plaintiffs have not pleaded mispresentation on the part of the defendants nor have they claimed damages as a consequence of such misrepresentation, even in their amended statement of claim, which was filed after the first part hearing of this suit. Counsel for the defendants also relied on the decision of the Supreme Court of New South Wales in < Dillingham Construction Pty Ltd v Downs(5) > to support his contention that the plaintiffs should have satisfied themselves on the site conditions and there was no duty on the defendants to give nor did they assume responsibility for giving, accurate and full information nor did the defendants' statements if indeed made by PW2 amount to warranties. The authority cited by counsel for the plaintiffs to support his clients' claim namely < Thomas v The Amuri County Council(2) > with respect is not in point as it can be distinguished on the facts of the case.

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97 (iv) Invoice no.698. This invoice contains certain items included in invoice no.690. Similarly this invoice is disallowed as the works were done before the handing over to the defendants. Hudson's Building & Engineering Contracts (10th edition) at page 268 states:

98 ..... in the absence of express provisions for the protection of the works, the risk in regard to the safety of the works remains with the contractor until they have been re-occupied by the employer .... In consequence, any additional work necessary to achieve completion must be carried out by him at his own expense if he is to discharge his liability under the contract. So too any work of reinstatement or repair if the works have been damaged by some external cause.

99 (v) Invoice no.699. The two outstanding items in this invoice namely 2 and 4 are disallowed as the work for item 2 was done before the handing over to the plaintiffs whilst that in item 4 was to rectify defects highlighted by the defendants in their letter to the plaintiffs dated 18 September 1985 (AB108-113).

100 (vi) Invoice no.708. Items 2 to 5 are disallowed as the dates show that the replacement/repair works were done in October and November 1985 before the handing over to the defendants. There was also a duplication of a repair charge stated in invoice 0699 (room 3268). Item 1 was for mounting and installing the speakers (exh P1) supplied by the defendants. It was DW1's contention that it took at best 15 minutes for the plaintiffs' workers to install each speaker. He thought the plaintiffs' charge of $3.50 per speaker too high and had offered instead a rate of $2. I allow the plaintiffs in full their claim for $4,133.50 for mounting soldering and installing 1181 ceiling speakers since apart from DW1's own personal views on the matter, the defendants did not

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produce any comparative evidence that the plaintiffs' unit charge of $3.50 is exorbitant.

101 (vii)Claim for $29,070 under PB8. Based on DW2's evidence I allow this claim in full. DW2 had not disputed the plaintiffs' entitlement to claim this amount for dismantling the conduits installed at a height of 2.37 metres and re-installing the same at 2.62 metres; the fault if any, lay with the defendants and their lack of co-ordination with the ceiling contractor. There was some uncertainty as to the height requirement applicable to the ceilings of hotel rooms at the material time and whether regulation 16 (exh D3) of the Building Control (Space, Light and Ventilation) Regulations 1979 which specifies the height of rooms (not ceilings) applied as contended by the defendants, or, whether the Fire Precautions for Buildings 1982 guidelines issued by the Development and Building Control Division applied as contended by the plaintiffs. It would be a fair deduction that the minimum height then prevailing for hotel room ceilings must be at least 2.4 metres. PW1 had admitted under cross-examination that he knew laying the conduits at 2.37 metres height contravened building regulations yet he proceeded nevertheless. In the light of DW2's evidence that it was a tacit understanding that the plaintiffs would be paid this sum, I do not think it fair to deny the plaintiffs their claim based on PW1's admissions.

102 Accordingly there will be judgment for the plaintiffs for $33,203.50 for the Tower C project made up as follows:-

103 (i) Invoice 708. $ 4,133.50 (ii) PB8 $29,070.00

104 Total:$33,203.50 _____

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105 together with interest at 6% per annum from the date of the writ until judgment.

106 It was the defendants' contention that as the defendants adopted the practice of issuing variation orders whenever variations/extra works were approved, that their failure to issue such variation orders must mean that the plaintiffs cannot claim for the additional works carried out; I reject this argument. At law the plaintiffs' entitlement to claim for variations/extra works is not dependent upon the whims and fancies of the defendants as to whether they will/will not issue such orders.

107 As for the plaintiffs' claim in quantum meruit, apart from their pleadings and citing < Thorn v London Corporation(1) > in support, no evidence was adduced to enable the court to determine the plaintiffs' entitlement if any to a reasonable fee for reasonable work done. Plaintiffs' counsel took the stand that the sums claimed are what the plaintiffs would be entitled to based on quantum meruit. In the absence of any evidence or even particulars, the court cannot award any sum to the plaintiffs by way of quantum meruit.

108 I now deal with the question of costs for the trial. The plaintiffs have succeeded in only 2 out of the 9 items they have claimed. Under the circumstances I feel it is only fair that they be awarded 20% of the taxed costs of the proceedings and I so order.

Lai Siu Chiu JC

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Kuo Chian Private Limited v Philips Project Development (Singapore) Private Limited [1992] SGHC 122

Edmund L C Chan for the plaintiffs
Yang Lih Shyng for the defendants

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