IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 8

Suit No 6919 of 1984

Between

Yong Tai Loong (Pte) Ltd

… *Plaintiff*

And

Tong Tien See Construction Company (sued as a firm)

… *Defendant*

GROUNDS OF DECISION

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

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Yong Tai Loong (Pte) Ltd v Tong Tien See Construction Company (sued as a firm)

[1992] SGHC 8

Suit No 6919 of 1984
Goh Joon Seng J
18 January 1992

1 **JUDGMENT:**

2 The plaintiffs are and were at all material times manufacturers and approved suppliers of aluminium doors for the Housing & Development Board's ('HDB') projects. The defendants were and are at all material times building contractors.

3 On 19 February 1979 the HDB accepted the defendants' tender for the erection and completion of five blocks of single storey terrace workshops (total 73 units plus 1 substation), one block of single storey eating house, piling works and general site works at Ang Mo Kio (Industrial) Neighbourhood 5 Contract 20B. Pursuant to the acceptance of the defendants' tender the contract dated 30 March 1979 was entered into between HDB and the defendants. The date of completion of the works was 11 May 1980. Liquidated damages for delay in completion was $2,190 per day. Upon the acceptance of their tender, the defendants negotiated with the plaintiffs who agreed to supply and install for the defendants 65 sets of type 'A' doors at $1,827.50 per set, 8 sets of type 'B' doors at $1,400 per set, 7 sets of type 'C' doors at $510 per set, and 2 sets of type

'D' doors at $1,000 per set. The contract was then prepared by the plaintiffs and sent to the defendants duly signed by PW1 one Helen Low Siow Choo who was the sales manager of the plaintiffs and dated 2 March 1979. The time of delivery of the doors was stated as 'about May 1980'. The contract in duplicate was returned duly signed by the defendants but with inter alia the date of delivery amended to 'about October 1979'. The amended date on both copies of the contract was then initialled by PW1 and one copy was returned to the defendants. PW1 agreed that she typed in the original delivery date of 'about May 1980' because she had been informed that the defendants' completion date in their agreement with HDB was May 1980. See page 9 of the notes of evidence.

4 'Q: They told you date of completion?

5 A: Of course.

6 Q: They told you date of completion was May 1980?

7 A: Yes.

8 Q: That's why you stated May 1980 originally as time of delivery?

9 A: Yes.'

10 There is a dispute in the evidence on what followed the amendment by the defendants.

11 See the evidence of PW1 at page 10 of the notes of evidence.

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12 'Q: Is it not correct that after receiving the amendment defendants told you that their completion date was May 1980 and they want the delivery date earlier?

13 A: They told me that they had amended the date to October 1979. I did not promise them. They said they wanted to bring forward the date. I did not promise them.

14 Q: By court: What do you mean by 'I did not promise them?'

15 A: I said I could not promise that I could deliver the goods by October 1979 but would try our best.

16 Q: Put it to you that defendants told you that they had amended the delivery date to October 1979 because their completion date was May 1980?

17 A: They told me they wanted to bring forward the date.'

18 This is contradicted by DW2 one Chia Siew Keng, a clerk employed by the defendants. See her evidence at page 56 of the notes of evidence:

19 'Q: The date May 1980 was originally there because Miss Low was told of the date May 1980 by you?

20 A: We only told her that our project had to be completed by May 1980. After the date May 1980 we told her that our completion date was may 1980 so we had to bring forward her date.

21 Q: Who cancelled 'May 1980'?

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22 A: I did.

23 Q: Who typed in October 1979?

24 A: I did.

25 Q: After that you sent contract back to Plaintiffs?

26 A: Yes, we told them that they had to sign the amendments. The amendments they had agreed.

27 Q: After you sent back the contract with the amendments did you not receive a phone call from Miss Low?

28 A: I cannot recall.

29 Q: Put it to you Miss Low in connection with the amendments on the date said that she could not promise to deliver the doors by October 1979 but would try?

30 A: I disagree. I remember I spoke to her before making the amendments. She agreed to them.'

31 If the completion date for the project in the contract between HDB and the defendants was May 1980, the doors would have to be installed well in advance of May 1980. I therefore cannot accept the evidence of PW1 that notwithstanding the specific amendment on the date of delivery from May 1980 to October 1979 she did not agree to the amended date but said "I could not promise that I could deliver the goods by October 1979 but would try our best."

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32 The installation of the doors must necessarily depend on the progress of the defendants' works. See PW1's evidence at page 2-3 of the notes of evidence:

33 '... ... These contracts were usually signed months in advance. A few months after the contract is signed, the buyer would ask for sample of the goods. After viewing the sample they would wait for a few more months before they ask for actual delivery of the goods. This is because the work site has to be ready for the installation of the doors. Sometimes at a certain stage of the work the buyer would ask us to go down and measure and after measurement we would return to the factory and then manufacture the goods. After manufacture we would then wait for instructions for delivery. This is the general practice.'

34 In due course the plaintiffs delivered 8 sets of type 'A' doors on 12 March 1980, 7 sets of type 'A' doors on 14 March 1980, 12 sets of type 'A' doors and 4 sets of type 'B' doors on 20 March 1980 and 1 set of type 'A' door as per invoice dated 22 July 1980. The 32 sets of doors delivered to the site were installed, leaving a balance of 41 sets of doors not delivered and not installed except for the tracks and channels.

35 On 16 April 1980 the defendants wrote to the plaintiffs as follows:

36 'Please refer to our letter dated 11.3.80 and contracts signed on 2.3.79 regarding the schedule of Metal Sliding & Folding Doors and Sunbreaker. To-date, your metal slding & folding doors and Sunbreaker are still outstanding. Please speed up your work as our building contract will expire on 11.5.80 and liquidated damage (sic) will be imposed on us for delayed completion. Therefore we shall be most grateful if you would kindly cooperation (sic) and complete your work within schedule. Should your work delay and affect our

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handing over to the Board, any liquidated damaged (sic) incurred, you are to be responsible for it. Your kind attention and co-operation to the above is greatly appreciated. Thank you, Yours faithfully

37 c.c. Architect-in-charge: Mr David Choo Kwong Wah Housing & Development Board National Development Building Singapore 0106'

38 On 28 April 1980 the plaintiffs replied:

39 ' We refer to your letter dd 16.4.80 for the above and hereby inform you that we will completed (sic) the above works by end of May, 1980. ... ...'

40 At this stage the defendants' application to HDB for extension of time had been turned down and therefore the completion date remained as 11 May 1980.

41 On 15 May 1980 the plaintiffs wrote again to the defendants:

42 'We refer to our letter dd 28.4.80 for the above, due to the late arrival of materials (s.s. Ramin Eta: 31.5.80 Singapore), we can complete delivery the articles by 20.6.80 and installation & painting works can be complete (sic) about 3 weeks' time from 20.6.80. ... ...'.

43 On 21 May 1980 the defendants replied:

44 'We refer to your letter dated 28.4.80 confirming that the above Metal Sliding & Folding Door will be completed by end of May 1980. We have enclosed a photo copy of your letter for our Architect's attention.

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45 We have received your letter dated 15.5.80 informing us that the above work can only be completed by 3 weeks time from 20.6.80 (i.e. mid of July 1980).

46 In view to the above, since you cannot completed (sic) the Metal Sliding & Folding Door within the time schedule, we regret to inform that we will engage another contractor to complete the Metal Sliding & Folding Door for the above project. Please complete the sunbreaker and canteen's Alluminium (sic) Door at soonest possible. Your kind attention and co-operation to the above is greatly appreciated.'

47 In the meantime on 20 May 1980 the defendants entered into an agreement with Nam Lee Industries (Pte) Ltd ('Nam Lee') for the supply and installation of 41 sets of doors at $2,663.10 per set of type 'A' door and $2,037.68 per set of type 'B' door. Nam Lee supplied and installed 37 sets of type 'A' doors and 4 sets of type 'B' doors at a total price of $106,685.42. When Nam Lee commenced work they found that the top tracks and bottom channels for the 41 doors had been laid by the plaintiffs, so they gave a credit note for $8,807.64 for these tracks and channels. If the plaintiffs had installed these 41 doors, the amount payable to them would have been $73,217.50. Thus the defendants incurred an extra cost of $33,467.92.

48 On 6 August 1980 the defendants were given an extension of time for completion to 15 July 1980. A further extension to 23 July 1980 was granted on 2 September 1980 and the works certified to have been completed on 23 July 1980. Therefore no liquidated damages were imposed by HDB on the defendants.

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49 In this suit, the plaintiffs' claim is for the sum of $34,081.18 being balance of price for supply and installation of 28 sets of type 'A' doors, 4 sets of type 'B' doors and supply and laying of 41 sets of top tracks and bottom channels. The breakdown of the plaintiffs' claim is set out below:

50 Date of Invoice Description Amount Invoice No of Item

51 20.3.80 41465 8 sets 'A' $14,620.00 type door

52 21.3.80 41473 7 sets 'A' $12,792.50 type door

53 22.3.80 41485 12 sets 'A' $21,930.00 type doors

54 22.3.80 41488 4 sets 'B' $ 5,600.00 type door

55 Date of Debit note Debit note 22.7.80 YTL/0107 1 set 'A' $1,827.50 type door

56 (a) Total for 32 sets of doors $56,770.00

57 Amount

58 14.6.80 42114 4 sets of $1,600.00 top tracks and bottom channels

59 14.6.80 42115 37 sets of top $18,500.00 tracks and bottom channels

60 (b) Total for 41 sets of top tracks and bottom channels $20,100.00

61 (c) Total for 32 sets of doors and 41 sets of top tracks and bottom channels $76,870.00

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62 Less paid on:

63 29.5.80 $20,000.00 7.7.81 15,000.00 22.10.81 7,788.82

64 Balance $34,081.18

65 One of the defences pleaded by the defendants is that the plaintiffs' claim had been settled for $22,788.82 'in or about October 1981' and payment of this was made in two instalments one for '$15,000' on 7 July 1981 and the balance of '$7,788' on 22 October 1981. DW1 Tong Tien See, a partner of the defendants, in his affidavit affirmed on 29 November 1984 and filed in these proceedings also stated at paragraph 5 as follows:

66 'Finally, shortly before 22nd October 1981 the plaintiffs' representative and I agreed to settle the plaintiffs' claim in the sum of $22,788.82 part of which amounting to $15,788 had been paid on 7 July 1981 and $7,000 paid on 22 October 1981 in full and final satisfaction of the plaintiffs' claim. ... ...'. (emphasis added)

67 The amount paid on 7 July 1981 was $15,000 and not $15,788. The amount paid on 22 October 1981 was $7,788.82 and not $7,000. If there was a settlement at $22,788.82 arrived at "shortly before 22 October 1981' how did it transpire that $15,000 being part thereof had been paid before the settlement was arrived at. I therefore reject the defence that there was a settlement and satisfaction of the plaintiffs" claim at $22,788.82.

68 The total value of the doors and tracks and channels installed as claimed by the plaintiffs was $76,870. This comprised of $56,770 for the 32 sets of doors completely installed and $20,100 for the 41 sets of top tracks and bottom

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channels with no doors installed. The plaintiffs are no doubt entitled to be paid for the 32 sets of doors completely installed with tracks and channels. This amounted to $56,770. On the 41 sets of top tracks and bottom channels laid without doors, the defendants have derived benefit by way of the credit note for $8,807.64 from Nam Lee. Accordingly the plaintiffs should be paid for these tracks and channels at $8,807.64 and not at $20,100 as claimed by the plaintiffs. The total payable by the defendants to the plaintiffs is therefore $65,577.64. The defendants have paid a total of $42,788.82. Therefore the plaintiffs are entitled to judgment for $22,788,82.

69 Against this the defendants have filed a counter claim for $33,467.92 being extra costs incurred by them in respect of the 41 sets of doors the plaintiffs failed to deliver and install.

70 Against the defendants' counterclaim, the plaintiffs contended that time was not of the essence of the contract and they also relied on conditions 7 and 13 of the agreement.

71 Condition 7 read:

72 'Dates given for delivery or installation or both, are approximate only. The seller is entitled to deliver or install or both, by instalments, and to treat the delivery or installation or both of one instalment under this contract as a separate contract. Default or delay in delivery or installation or both of any instalment by the seller shall not entitle the buyer to treat the contract as repudiated.'

73 Condition 13 read:

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74 'The seller shall not be responsible for any failure or delay in delivery of the said goods due to any cause whatsoever beyond its control or that of the supplier or suppliers of the raw materials for the said goods including, without prejudice to the generality of the foregoing words, inability to obtain raw materials actions of the Republic's enemies or civil commotion accidents plant breakdown interference by labour or strikes or lockouts of employees act of God or any restriction regulation order act or omission or operation by any local or municipal authority or government department, in Singapore or elsewhere. The seller shall be entitled to repudiate the contract in any of the foregoing circumstances.'

75 The defendants' contract with HDB had a completion date which was originally 11 May 1980. It contains a liquidated damages clause under which any delay in completion would render the defendants liable to pay $2,190 per day. The delivery date of 'About May 1980' was specifically amended to 'About October 1979'. The plaintiffs were one of only two suppliers of aluminium doors for HDB projects. They supplied 80% of HDB's requirements. They must know that the Defendants' completion date under their contract with HDB was of the essence and hence the date on which the plaintiffs should be ready to make delivery too was of the essence.

76 Benjamin's Sales of Goods Third Edition para 646 reads:

77 ' By a clause in the contract of sale, the seller may be entitled to suspend delivery or extend the time for delivery or even cancel the whole or part of the contract upon the happening of a specified event or events. The burden of proof is on the seller to prove the facts, bringing the case within the clause. Frequently a number of events are specified and then followed by the words "or any other

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causes beyond our control". Such general words in a commercial document are prima facie to be construed as having their natural and larger meaning and are not limited to events ejusdem generis with those previously enumerated. A clause which provides that the date of delivery is approximate only, and that the seller is not to be responsible for any delay or non-delivery, does not confer upon him an absolute discretion whether to deliver or not and so render the contract nugatory, but only excuses him if non-delivery is due to a cause outside his control. If the clause provides that the seller is to be "excused" or "not to be responsible" upon the occurrence of certain events or any other causes beyond his control, he must show that he has been prevented from fulfilling the contract by one of the specified events or some other cause beyond his control.'

78 Paragraph 647 reads:

79 ' Where the seller seeks to invoke the protection of a clause which states that he is to be relieved of liability if he is "prevented" from carrying out his obligations under the contract, he must show that the performance has become physically or legally impossible, and not merely more difficult or unprofitable. It is not sufficient to show that his intended supplier is unable to supply the goods if he can obtain goods of the contract description from another supplier ... ...'

80 In Barnett v IRA L. & A.C. Berk Pty Ltd Vol 52 State Reports NSW 268, a customer being then desirous of buying a car from the defendant signed an order form and paid the deposit of 50. The order was accepted by the defendant. Before the time of delivery of the car was due, the customer changed his mind and decided not to buy the car and demanded refund of the deposit. Clause 5 on the reverse side of the order form provided:

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81 ' In the event of non-delivery I shall have no claim for damages against the company ... ... and the return to me of any moneys which shall have been paid and my vehicle traded in hereunder or in lieu of such trade-in the amount of all allowance mentioned on the face hereof will cancel this order and no further liability or responsibility will attach to the company ... in respect hereof.'

82 Clause 6 stated:

83 ' The date of delivery given is only an approximate date and the company is not ... ... to be held responsible for any delay or non- delivery arising through or by reason of any cause howsoever and wheresoever arising.'

84 Per Owen J. at 275:

85 'I find no great difficulty in construing these clauses so as to avoid defeating the contractual intention of the parties. They must be read together and, if the document had taken a more orderly form, clause 5 would properly have followed and not preceded clause 6. Clause 6 is, I think, the principal one of the two, and under it the defendant "is not to be held responsible for any delay or non-delivery arising through or by reason of any cause". Clause 5 is in a sense ancillary to this. Its purpose is to make it clear that in the event of non-delivery the return of the buyer's deposit will close the transaction and relieve the seller of further responsibility. But I do not read these clauses as excusing the defendant in all circumstances from the consequences of non-delivery or delayed delivery. They excuse it only where non-delivery or delayed delivery is due to a 'cause' and a capricious or mala fide refusal to deliver on the due date would not, in my opinion, constitute a "cause" for refusing to make delivery. Such a refusal would be for no 'cause' at all.'

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86 To afford the plaintiffs a defence to this counterclaim the inability on the part of the plain- tiffs to supply and install the 41 sets of doors must be due to anyone of the causes set out in Conditions 7 and 13. The plaintiffs contended that they were unable to supply these doors in time due to these causes:

87 (1) the late arrival of materials on board the S.S. Ramin notified to the defendants on 15.5.80;

88 (2) on the 22.5.80 the plaintiffs informed the defendants of the problem on the supply of carbon dioxide -

89 'We refer to your letter of the 16.4.80 for the above and regret to inform you that due to our gas supplier, M/s Singapore Carbon Dioxide Co Pte Ltd machinery out of order, at the present moment, they cannot supply us the carbon dioxide until the end of May/beginning of June, therefore without the CO2 gas, our automatic welding works cannot be proceed (sic) and influence to our production for the Metal Doors as well as delay the delivery.'

90 May 1980 was well beyond the contractual date on which the plaintiffs should have been ready to deliver and install all the doors. Therefore even accepting these two reasons as bona fide, they could not or should not have any bearing on the production of the doors which should have by then been manufactured and installed. I also find it difficult to accept these two reasons given by the plaintiffs as their supply to other projects was not affected. The plaintiffs supplied 80% of HDB's door requirements. See the evidence of PW1 at page 14 of the notes of evidence -

91 'Q: By court: Do you have to delay other projects?

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92 A: The other projects were not affected.'

93 If the plaintiffs could not manufacture the 41 doors due to lack of supply of carbon dioxide why did PW1 claim that they had been manufactured. See her evidence at pages 6-7 of the notes of evidence.

94 ' This sum of $76,870 was for the 32 sets of doors completely installed and 41 sets of tracks and bottom channels installed. It did not include the 41 sets of doors which we say had been manufactured.' (emphasis added)

95 In any case the plaintiffs failed to establish that they could not have obtained their supply of carbon dioxide from other sources.

96 In P.J. Van Der Zijden Wildhandel N.V. v Tucker & Cross Ltd (1975) Vol 2 Ll Law Report 240, by two contracts dated 31 May and 2 June 1972, the sellers agreed to supply the buyers with 230 metric tons of frozen chinese rabbits, shipment August/December 1972, and December 1972/January 1973 c.i.f. Rotterdam. The contracts contained a London arbitration clause and also provided inter alia:

97 'Should the sellers fail to deliver the contracted goods or effect the shipment in time by reason of war, flood, fire, storm, heavy snow or any other causes beyond their control, the time of shipment might be extended, or alternatively a part or whole of the contract might be cancelled but the sellers have to furnish the buyers with a certificate attesting such event or events.'

98 There was a partial non-delivery under the first contract and a total non-delivery under the second contract.

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99 On 10 July 1973, the sellers' solicitors wrote to the buyers as follows:

100 ' For the avoidance of any doubt we think we should invite you to accept this letter as a certificate on behalf of our clients in terms of the contract that they have not been supplied with the goods and cannot supply you and that such failure of supply is for reasons beyond their control.'

101 It was held on a special case stated that:

102 (i) the sellers had failed to prove that it was impossible for them to fulfil their contract; and

103 (ii) even if the sellers' solicitors' letter of July 10 was a sufficient certificate, all that it certified was the fact that the sellers had not themselves received the goods or documents in sufficient quantities to enable them to fulfil the particular contracts. It did not say what steps the sellers had taken to obtain an alternative source of supply; and therefore it was not conclusive.

104 Donaldson J. at page 242:

105 '... ... All that they have been able to show was that the imports of Chinese frozen rabbits into Holland were at all material times much smaller in quantity than the amount called for under these contracts. They have quite failed to obtain any finding from the arbitrator that they were unable to buy in Chinese frozen rabbits from some supplier other than the one with whom they have a contract. Unless they can do that, they are unable to show that they were prevented from fulfilling their contract by a cause beyond their control.'

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106 If the plaintiffs' supply of carbon dioxide from Singapore Carbon Dioxide Co Pte Ltd had been cut off, there must have been alternative sources of supply, otherwise other projects using plaintiffs' doors would also have been affected. Nam Lee too would have been affected and would not have been able to manufacture the 41 doors that the plaintiffs failed to deliver.

107 (3) The plaintiffs also contended that the site was not ready for installation of the doors. The top tracks and bottom channels had been installed. The installation of the doors could easily be carried out. See the evidence of Wong Keng Fatt, PW2, the plaintiffs' foreman, at page 23 of the notes of evidence:

108 'Q: In respect of the remaining 41 doors, did you complete the tracks and channels?

109 A: Yes.

110 Q: The doors would have been fitted without any difficulty if the doors are available?

111 A: Yes.'

112 The plaintiffs however contended that the installation of the doors could not proceed due to obstructions posed by the scaffoldings. The last inspection of the site by PW2 was in March 1980. He never went back after that date. As of March 1980 the defendants' works had reached the final stage. See the evidence of PW2 at pages 23-24 of notes of evidence:

113 'Q: When did you leave the work site for the last time?

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114 A: Sometime in March 1980. After that I never went back.

115 Q: When you left the last time what was the work you did?

116 A: I inspected the place after I went to the other sites.

117 Q: What was the last piece of work you did besides inspection?

118 A: After I had completed installing the upper tracks and bottom channels I did not return to the site thereafter.

119 Q: So if the scaffoldings had been taken off the day after you left you would not know?

120 A: I agree. Q: By court: When you left the last time what work were you doing?

121 A: When I left in March there was laying of wire cables, zinc roof and painting was going on.

122 Q: These would be the final stages of the construction?

123 A: The laying of wires and painting are the final stages of work.'

124 The scaffoldings in any case would not have interfered with the taking of measurements for purpose of manufacturing the doors. See the evidence of PW2 at pages 21-22 of the notes of evidence:

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125 'When I went there the first and second time the scaffoldings were not taken down. This affected the fixing of the brackets but not the taking of measurements.'

126 If there were scaffoldings obstructing the installa- tion of doors, there was no reason for these scaffold- ings to remain after March 1980 given that the works had reached the final stage in March 1980. If these doors were available they would have been installed within a matter of days. The plaintiffs had previously taken only 2-3 days to install the 32 doors.

127 I therefore find that the plaintiffs' failure to supply and install the remaining 41 doors did not fall within Condition 7 and/or 13 of the contract. Accordingly the plaintiffs were in breach which breach entitled the defendants to terminate the agreement and to seek alternative source of supply. The only alternative supplier then was Nam Lee. See the evidence of PW1 at page 19 of the notes of evidence:

128 'Q: In 1979 you and Nam Lee were the only approved suppliers?

129 A: Yes.'

130 As completion was then due, the defendants had no choice but to agree to Nam Lee's terms. They incurred an extra cost of $33,467.92. Accordingly the defendants are entitled to their counterclaim in the sum of $33,467.92.

131 Therefore on the evidence before me, the plaintiffs are entitled to judgment in the sum of $22,788.82 on their claim and the defendants are entitled to judgment in the sum of $33,467.92 on their counterclaim. After setting off the amount of the plaintiffs' claim, the balance of the defendants' counterclaim

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stands at $10,679.10. But as the defendants' counterclaim as pleaded is for the sum of $5,109.10, I award the defendants the sum of $5,109.10.

132 On costs I fix the sum at $2,000 to be paid by the plaintiffs to the defendants.

133 Dated this 18th day of January, 1992.

Goh Joon Seng J

David Wee for the plaintiffs
B Mohan Singh for the defendants

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