IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 112

Suit 936/1998

Between

Hock Chuan Ann Construction Pte Ltd

… Plaintiff

And

Kimta Electric Pte Ltd

… Defendant

GROUNDS OF DECISION

Agency — Competency of agents; Contract — Formation; Contract — Mistake; Contract — Misrepresentation

Version No 1: 29 Oct 2026 (23:45 hrs)

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Hock Chuan Ann Construction Pte Ltd v Kimta Electric Pte Ltd

[1999] SGHC 112

Suit 936/1998
Lai Siu Chiu J
30 April 1999

1 : ***The facts***

2 The plaintiffs are a Singapore company and are in the construction business. At the material time they were the main contractors for the redevelopment of Bedok Camp (`the project`) for and on behalf of the Ministry of Defence (`Mindef`).

3 The defendants are another local company and are electrical contractors. At the material time, they were a subcontractor of and doing work for, Build-Speed Construction Pte Ltd (`Build-Speed`), the previous main contractors of the project before the plaintiffs took over. The defendants carried out some underground cable works and other electrical works to the value of $165,000 for Build-Speed but were not paid due to the latter`s financial difficulties. The electrical subcontractor for the project was a company called Lung Ping Electrical Engineering Pte Ltd (`Lung Ping`).

4 By a deed of novation dated 4 April 1998 made between the plaintiffs, Build-Speed and Mindef, the plaintiffs took over the contract made between

Build-Speed and Mindef dated 12 July 1996; Build-Speed`s contract had been terminated much earlier, on 11 October 1997. On or about 4 April 1998, the plaintiffs also took possession of the site. The plaintiffs needed a subcontractor to carry out the electrical works. To that intent and purpose, the plaintiffs` project manager, Chua Chong Poh (`Chua`) inquired of the plaintiffs` senior manager Fong Sun Yong (`Fong`) and was told, he could approach the defendants to give a quotation. Chua had worked with the defendants previously when he was with another construction company before he joined the plaintiffs at end March 1998.

5 Accordingly, Chua telephoned the defendants` Joseph Ang (`Joseph`) and invited him to submit a quotation. Joseph informed Chua that although the defendants had submitted a quotation to Build-Speed for the full electrical works, they did not want the job. Chua informed Joseph that if the defendants were interested in the job, they should contact Fong.

6 The defendants did submit a quotation to Fong dated 28 March 1998 (`the first quotation`) to supply and install electrical works at the sum of $5,215,000 excluding goods and services tax (GST). Fong found the first quotation too high and requested the defendants` general manager Melvyn Ang (`Melvyn`) to submit a revised quotation which the defendants did on 8 April 1998 in the sum of $4,591,000 (`the second quotation`) excluding GST. The plaintiffs still found the second quotation too high and sometime between 8-14 April 1998, Fong met Melvyn, handed the latter a handwritten breakdown of major items and requested the defendants to further revise their second quotation. The defendants did submit a further revised quotation by letter dated 14 April 1998 (`the third quotation`) in the sum of $4,575,500. However, the plaintiffs still found the third quotation high. Fong spoke to Melvyn and indicated that the plaintiffs would supply the equipment for the first three items

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set out in the third quotation. Melvyn submitted a ***final offer*** on 17 April 1998 (`the fourth quotation`) in the sum of $4,365,000 excluding GST, to the plaintiffs.

7 Fong spoke to Melvyn at the plaintiffs` office; Melvyn offered to reduce the sum in the fourth quotation to $4.2m and said his uncle Joseph would take over the negotiations as he was going to Taiwan for national service training. Joseph (who is also the defendants` project manager) followed up on Melvyn`s offer by writing to the plaintiffs on 21 April 1998 stating that the defendants` price in the fourth quotation was reduced to $4.2m.

8 Upon receipt of the defendants` letter dated 21 April 1998, Fong telephoned Joseph and during that conversation Joseph indicated that he was prepared to reduce the defendants` price further to $3.653m if three items (namely transformer, generator sets and switch gear) and their installation, were omitted from the defendants` scope of works. This was confirmed in the defendants` letter dated 22 April 1998 (the fifth quotation) to the plaintiffs signed by Joseph where the price quoted was $3.653m.

9 On 22 April 1998 a meeting was held at the plaintiffs` office to discuss the defendants` fifth quotation. It was attended by Fong, the plaintiffs` managing director Chua Thuan Koon, their contracts manager Thomas Khong and Joseph. Fong told Joseph that if the defendants would agree to a price of $3.6m (thereby reducing the price in the fifth quotation by $53,000), the plaintiffs would award the contract for electrical works to the defendants. Fong alleged that Joseph accepted the reduction and said he had ***no problem*** with the price of $3.6m but said that as a matter of courtesy, he had to inform his other director(s); I should point out this allegation was denied by Joseph whose version I shall refer to later.

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10 According to Fong, he telephoned Joseph the following morning (23 April 1998) to ask for and which he obtained, confirmation that the plaintiffs` offer of $3.6m was accepted; Fong also requested Joseph to start work immediately. The plaintiffs then received the defendants` letter dated 23 April 1998 (`the sixth quotation`) confirming the price at $3.6m with a breakdown. In addition to the breakdown, the sixth quotation included eight items which the defendants stated ` ***shall constitute as our condition of acceptance*** `. Amongst these conditions were cll 6, 7 and 8 which are as follows:

> 6 We shall entitle to claim variation cost should there be any additional alteration work required.
>
> 7 We reserve the right to offer alternative range of material which is equivalent to the material list furnish (sic);
>
> 8 We shall be able to mobilise our worker [sic] to site within three days from the date of confirming the letter of award.

11 Two days later, Chua informed Fong that Joseph would not start work without the plaintiffs` letter of confirmation. Accordingly, Fong wrote on the plaintiffs` behalf to the defendants on 25 April 1998 (`the letter of acceptance`) confirming acceptance of the sixth quotation, which letter was faxed to the defendants that same morning.

12 On the afternoon of 24 April 1998, the plaintiffs` contracts manager Thomas Khong (who was not aware of the letter of acceptance) had also sent a letter of confirmation (`the letter of intent`) to the defendants. Although it was dated 24 April 1998 (which was a Friday), the letter was only transmitted to the defendants on the following Monday 27 April 1998. This was because Joseph twice requested amendments to the letter, which requests were acceded to by the plaintiffs.

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13 On 27 April 1998, the defendants acknowledged receipt of the letters of acceptance and intent. At the same time their letter (signed by Joseph) raised ***a number of concerns and queries*** that they hoped the plaintiffs could address and advise before the defendants proceeded with any work on site, ***in order that future disputes can be minimised through better understanding of the sub-contract at the pre-award stage*** .

14 On the evening of 28 April 1998, Joseph had visited the plaintiffs` site office and complained to their Burmese site manager Zaw Oo and Chua that a drawing (of a set which the defendants` representative had collected from the site office earlier) was of the wrong scale - 1:200 instead of 1:500. Joseph said that the mistake in measurement would cost the defendants an additional $600,000 as the sixth quotation had been under-priced as a result. Chua contacted Fong who went to the site office. In the ensuing discussions, Fong said he suggested to Joseph that the defendants should carry on with the electrical works for the price of $3.6m and if the actual length of cabling work was found to be higher than that shown in the (erroneous) drawing, the plaintiffs would be prepared to compensate the defendants half the cost. On the other hand, Joseph asserted that Fong had said the additional cost of $600,000 was too high and if the defendants did not proceed with the works at the agreed price of $3.6m, the defendants ***would be in trouble*** . In response, Joseph informed both Chua and Fong that if that was the plaintiffs` position, there was no point in further negotiations and he walked out of the meeting.

15 On the following day the plaintiffs replied (see AB79) to the defendants` letter dated 29 April 1998. They stated the defendants had received the letter of intent (amended in accordance with their request), the defendants had been approved as the plaintiffs` domestic subcontractor by Mindef/the architects and

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requested the defendants to start work. The defendants replied (AB80-81) on the same day; Joseph`s letter, inter alia, stated:

> *We note your advice and confirmation in your 29 April 1998 letter that we have been approved by the architect and Mindef (LEO) to be your domestic electrical subcontractor for the above project.*
>
> *However, on 28 April 1998, we have had the chance of viewing the drawings on site. We have noticed that your set of site plan is of a 1:500 scale whereas the site plan that you have given to us showing the external submains cable routes from MSB and EMSB to all the respective building DBs was of a 1:200 scale. We have now ascertained (by scaling off and comparing with the dimensions stated) that 1:500 is indeed the correct scale to use.*
>
> *This imply [sic] that the distances of cables, etc upon which our quote was based are now confirmed to be incorrect. We therefore wish to advise that the amount of S$3,600,000 as quoted to you previously is a mistake.*

16 In the event, the defendants did not carry out the electrical works at the price of $3.6m or at all, notwithstanding further correspondence between the parties up to 22 May 1998 which included, a letter from the plaintiffs to the defendants dated 30 April 1998 giving a deadline of 7 May 1998 to the defendants to decide whether they would stand by or withdraw from the subcontract. Joseph submitted on the defendants` behalf a fresh quotation dated 4 May 1998 to the plaintiffs in the sum of $5,131,864. The plaintiffs rejected the fresh quotation by their letter/fax of 5 May 1998 contending that the defendants were in repudiatory breach of the contract which the plaintiffs accepted.

17 The electrical works contracted to the defendants were eventually carried out by another contractor (Leun Wah Electric Co Pte Ltd) for the plaintiffs at a sum of $3.9m, reduced from the original price of $4,009,461 quoted to the plaintiffs on 6 May 1998 (see AB 90-92). Arising from the

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defendants` wrongful repudiation, the plaintiffs alleged they had suffered loss and damage.

18 ***The pleadings***

19

20 The plaintiffs` statement of claim set out in the main the events I have referred to. They contended that the defendants were in breach of a contract which had been orally concluded on 23 April 1998 between Fong and Joseph. In the alternative, the plaintiffs asserted that the contract was contained or evidenced in the plaintiffs` letters of intent and acceptance dated 24 and 25 April 1998 respectively. The plaintiffs alleged that as a result of the defendants` repudiatory breach, they had suffered loss and special damages quantified at $333,605 primarily due to having to engage Leun Wah for the works subcontracted to the defendants.

21 In the (amended) defence, the defendants denied any contract had been concluded between the parties either on the terms alleged by the plaintiffs or at all. They contended that the sixth quotation offered to contract with the plaintiffs on a `design and build` basis at a price of $3.6m. They further denied that Fong had telephoned Joseph on 23 April 1998 and that Joseph had replied in the affirmative to the inquiry whether the defendants could accept the price of $3.6m.

22 The defendants alleged that cl 7 of the sixth quotation reserved to the defendants the right to offer alternative range of materials equivalent to the materials list furnished by the plaintiffs. The plaintiffs did not accept the said cl 7 in their letter of intent dated 24 April 1998. As such, the letter of intent

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constituted either a letter of rejection of the sixth quotation or, a counter-offer which was never accepted by the defendants. Therefore, the sixth quotation was no longer capable of acceptance by the plaintiffs. Consequently, the plaintiffs` letter of acceptance did not amount to a valid acceptance of the sixth quotation.

23 In the alternative, the defendants alleged that the alleged concluded contract was a contract contingent upon approval by the architects or Mindef. The letter of intent constituted a counter-offer which rendered the sixth quotation no longer capable of acceptance.

24 The defendants denied they failed to commence work; they did not commence work because there was no concluded contract between the parties. Further, the defendants had, in their letter dated 27 April 1998, requested further information from the plaintiffs to facilitate better understanding of the subcontract at the pre-award stage. For that reason, the parties were in the negotiation stage and no contract ever came into existence. In the alternative, there was no concluded contract between the parties because there were insufficient terms agreed upon to make the alleged contract workable. Apart from the price, there was no agreement between the plaintiffs and the defendants on material terms such as:

25 a date of completion;

26 b whether the contract was contingent on approval by the architects or Mindef:

27 c main contract programme; and

28 d mode of payment.

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29 In the further alternative, the defendants averred that the contract was vitiated by mistake. The defendants also contended that there was no concluded contract because they were at cross-purposes and there was no consensus ad idem because, the plaintiffs contracted on a contingent basis and on a confirmed design basis whereas the defendants intended to contract on a confirmed `design and build` basis when the sixth quotation was requested. The defendants alleged misrepresentation against the plaintiffs.

30 ***The issues***

31

32 I had informed the parties at the commencement of trial that I would only determine liability; the assessment of damages if any, depending on the outcome of my findings, would be done by the Registrar at a later stage. The only main issue for determination is: was there or was there not a concluded contract between the parties? If there was, when was it concluded? A finding on the second issue is necessary as the plaintiffs by their pleaded case, are uncertain on the point.

33 ***The plaintiffs` case***

34

35 I shall not repeat what has been set out earlier as the plaintiffs` version of events. I shall however refer to the cross-examination of the plaintiffs` witnesses where relevant, relating to my findings on the issue of liability only; I start with Fong`s cross-examination.

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36 Questioned on when the plaintiffs considered the contract with the defendants was concluded, Fong (N/E 12) said it was at about noon on 23 April 1998 during the telephone conversation with Joseph. He said the defendants started off by confirming [the] price (N/E 24). If that conversation did not constitute acceptance, then (counsel for the plaintiffs submitted) the contract between the parties was concluded by the defendants` offer in their sixth quotation dated 23 April 1998 which was capable of being and was, accepted by the plaintiffs by their letter (of acceptance) dated 25 April 1998. Although in his affidavit evidence-in-chief (para 8), Fong had deposed he did not object to the conditions set out in the sixth quotation, during cross-examination (N/E 14) he testified that after Joseph had confirmed the pricing (at $3.6m) in their aforesaid telephone conversation, the latter then inserted extra terms and conditions by the sixth quotation.

37 Fong agreed with counsel for the defendants that if the plaintiffs considered the contract evidenced by the sixth quotation, it was incorrect for him to assert that the defendants were in breach of contract in not starting work before 25 April 1998 as the sixth quotation clearly stated in cl 8 that the defendants required three (3) days to mobilise their workers from the date of confirmation by the plaintiffs. He further agreed that terms and conditions were never discussed before confirmation of the defendants` pricing; a formal letter of subcontract would have followed up on the agreed pricing to confirm such matters as, the dates of commencement and completion, mode of payment to the defendants, retention sum, quantum of liquidated damages for late completion and warranty period for defects. Fong said he had also assumed (N/E 32) the defendants had access to the relevant electrical plans as otherwise, they would not have been in a position to give a detailed breakdown in their several quotations to the plaintiffs. He was not involved in the sorting or giving out of

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drawings as that was the responsibility of the contracts manager. The contract drawings were prepared by CMP Consultants Pte Ltd (CMP).

38 As for Chua, he had given a list of approved materials and equipment to the defendants on 24 April 1998, on Fong`s instructions. However, the defendants could propose and use alternatives which were the equivalent of what was stated in the list, with the approval of Mindef and CMP. Questioned why in that case he had sent to the defendants his letter dated 24 April 1998 stating that,

> *... please be informed that we have to be strict with equipment and material that has been approved by the Consultant and Owner`, Chua explained he intended to be strict with the defendants because there was less than one year left for the contract, so there were time constraints for submission of alternative materials for approval; he disagreed his letter meant that the defendants could not propose alternative materials or equipment. Chua singled out the drawing (at AB 190) where the scale of 1:200 was wrong stating that it should have been 1:500. He opined that a contractor should not take the risk of pricing his scope of works based on drawings alone - instead, he should take actual site measurements.*

39 Zaw Oo (Zaw) testified that he was the mechanical and electrical (M&E) co-ordinator of the plaintiffs for the project. When he first went on site (6 April 1998) he found the plans and drawings in a mess and it took him until almost end April to sort them out; some drawings were also missing. He was told to compile and give a set of drawings to the defendants on Sunday 26 April 1998. Apparently the defendants were the only subcontractor to receive a set of plans from the plaintiffs as other subcontractors or contractors like Surge, Leun Wah and Ban Hong obtained theirs from CMP direct.

40 Zaw recalled that Melvyn had visited the site office on 15 April 1998. Zaw (with Chua) had shown some drawings to Melvyn then, in particular one pertaining to high tension underground cables (see AB 172) even though that

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item was not within the defendants` scope of works. On the morning of 28 April 1998, a representative of the defendants came to the site office to collect a set of electrical drawings and a bound volume of technical specifications from Zaw. Earlier on 24 April 1998, Zaw had been informed by Chua that the defendants had been awarded the subcontract for electrical works and a representative of CMP instructed him to prepare a set of drawings for the defendants.

41 It would appear from Khong`s testimony`s under cross-examination that his knowledge of a number of significant events was not obtained first hand but what he had been told by Fong. Often, his answers to counsel`s questions were Not sure which again was not particularly helpful. He was told by Fong on 23 April 1998 that the contract with the defendants had been confirmed but he had no idea what terms had been discussed between the plaintiffs and the defendants. To him, once a contract had been confirmed, it would take some time to prepare and formalise the subcontract agreement (N/E 84). The parties would negotiate and compromise, if the terms stated in the plaintiffs` standard subcontract agreement were not agreed to by the defendants. He acknowledged that as at 23 April 1998, the defendants had not been given a copy of the plaintiffs` standard subcontract.

42 Questioned by counsel for the defendants on how the plaintiffs would deal with the defendants` claim for variation works, Khong testified he had informed the defendants at their meeting on 22 April 1998 that the defendants would be paid on a back-to-back basis subject to 15% deduction by the plaintiffs for the latter`s profit and attendance. When his attention was drawn to cl 6 of the defendants` sixth quotation (see [para] 9 supra) which showed that the defendants apparently did not agree with his proposal, Khong said the parties could still negotiate on that item.

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43 Notwithstanding his view that the contract price of $3.6m agreed with the defendants was a lump sum contract, Khong explained he had used the words `... ***provisional subcontract sum of $3,600,000*** ...` in the letter of intent because the agreed price was still capable of adjustment for variations; he accepted counsel`s suggestion that there could also be further adjustments for labour fluctuations. As far as he was concerned, the defendants would have been paid by monthly progress payments, within 30 days of their claims, upon certification by the plaintiffs, as the defendants were domestic subcontractors appointed by the plaintiffs, not by Mindef or the latter`s consultants. Further, Khong said it was understood that there would be a warranty against defects provided by the defendants and that its duration would be 12 months. Equally, he had assumed that the defendants would have been approved as the plaintiffs` subcontractor by Mindef even though he had made that a condition (para 4) in the letter of intent, the reason being that he had received Mindef`s oral assurance that, so long as the defendants were registered with the Construction and Industry Development Board (CIDB), approval would not be a problem. He thought the defendants would know of this requirement. Like Fong, Khong also assumed that the defendants had a set of the relevant drawings as they had previously submitted a quotation to Build-Speed for electrical works. He was also under the impression that the defendants were Build-Speed`s subcontractor for all electrical works.

44 ***The defendants` case***

45

46 The defendants called only two witnesses to testify, namely, Melvyn and Joseph; I turn first to Melvyn`s testimony. He maintained that the defendants` several quotations to the plaintiffs were premised on a `design and build`

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contract although not stated explicitly so in the quotations, with adjustments being made for materials and labour fluctuations. The defendants had previously been given documents by Build-Speed in November 1996 to quote for the project on a `design and build` basis. However the contract for electrical works was not awarded to the defendants. It was only on 15 April 1998 while at the site that Melvyn learnt Build-Speed had awarded the electrical subcontract to Lung Ping. Build-Speed then went into liquidation (in May 1998). For those reasons the defendants did not know the original completion date for the project. When the defendants carried out underground cable works for Build-Speed, it was on the basis that they would very likely be awarded the contract for electrical works by the latter. At that time the site was an empty piece of land. The defendants did not need drawings for the cable works which they carried out in April 1997 as those were diversion works ordered by Telecommunication Authority of Singapore (TAS). Melvyn disagreed with counsel`s suggestion that the defendants followed the drawings of CMP when they carried out those works. As the defendants quoted to the plaintiffs on a `design and build` basis, they would not ask for electrical drawings. He also disagreed with counsel`s suggestion that if Lung Ping quoted to Build-Speed based on drawings of CMP, then the electrical works could not have been a `design and build` contract - he surmised that Lung Ping could have asked CMP to assist in the design. He acknowledged however that when Fong requested a revision of the first quotation, the former did not ask for a re-submission on a `design and build` basis. Neither did Melvyn inform Fong at the meeting on 18 April 1998 that the fourth quotation was on a `design and build` basis. However, at the earlier site meeting (15 April 1998), he had explained to Fong that it was a `design and build` project when the latter queried why the price of the defendants` drawings was so high.

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47 Melvyn said that when he visited the site on 15 April 1998, it was messy although some building structures were already in place. He asked Chua for some preliminary drawings because Melvyn wanted to update himself on the progress of the project to determine whether he could (as requested by the plaintiffs) further reduce the price of $4,575,000 in the third quotation. Chua referred Melvyn to Zaw who did not give him a complete set of drawings for review but only showed Melvyn technical specifications and some loose drawings showing the PUB substation incoming cable route; Zaw also showed Melvyn a site-plan (AB 189). That was the first time that Melvyn met Fong.

48 On 17 April 1998 the defendants submitted the fourth quotation which the plaintiffs still found too high as which result Melvyn was asked to and did attend, a meeting with the plaintiffs` representatives on 18 April 1998. At this meeting, Melvyn said he informed the plaintiffs that the defendants reserved the right to offer alternatives to the materials and equipment list dated 16 March 1998 which Melvyn had seen on 15 April 1998 at the site-office.

49 Questioned by counsel for the plaintiffs on how the defendants had arrived at their figure (of $4,413,000) in their quotation to Build-Speed, Melvyn explained that he used a rule of thumb (for `design and build` electrical works) of $40-$200 per square metre, based on the drawings given to him by Build-Speed with a scale of 1:1,000. He priced based either on quantities already given or, on the percentage of work left to be completed. At the time the defendants submitted their quotation to Build-Speed, they did not submit any design proposals; they would only submit the design if and after, they were awarded the contract. Although he himself was not a qualified electrical engineer, Melvyn said he would prepare the design and then have his drawings approved/endorsed by CMP`s professional engineer.

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50 Although Melvyn claimed that the defendants had completed the TAS works, counsel for the plaintiffs drew to his attention that the defendants` quotation to Build-Speed dated 9 December 1996 (see AB 5) still contained that item (item 14) priced at $165,000 and in the first quotation (AB 13) priced at $200,000 which the defendants rendered to the plaintiffs. Melvyn sought to justify his evidence by saying he attempted to recover some costs (presumably from the plaintiffs in lieu of payment from Build-Speed) but in the next breath he claimed that the works were not yet entirely completed. Although the drawings (three) shown to him by Zaw contained details of the power grid substation, electrical installations and external cable route layout (which drawing AB 189 was dated September 1997), Melvyn maintained he still considered them `preliminary` plans; he further denied he had seen more than three drawings. He could not recall being informed by Chua to refer to CMP for drawings.

51 Contrary to the plaintiffs` assertions, Melvyn denied that at the site meeting on 15 April 1998, he had agreed with the plaintiffs` proposal to deduct 15% from the defendants` variation claims for the plaintiffs` profit and attendance; the proposal was subject to further discussion and negotiation, like the defendants` offer of $4.365m. However, he did agree with the plaintiffs` condition that the defendants` appointment was subject to Mindef`s approval.

52 As for Joseph, he claimed that Chua had requested for a quotation on the same basis as what the defendants had quoted to Build-Speed, even though the plaintiffs did not then have the defendants` quotation to Build-Speed nor did Joseph provide them with a copy. Joseph denied that when he met the plaintiffs` representatives on 22 April 1998, he had agreed with their proposal that payment of the defendants` variation claims would be on a back-to-back basis subject to 15% deduction by the plaintiffs. He could not agree to the proposal

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just as he could not agree to reduce the defendants` price of $3.653m in the fifth quotation to $3.6m, without discussing with his management (notwithstanding that as a director of the defendants he had the authority to decide), although he did indicate at the meeting that the reduction would not be a problem. Joseph also denied that he was told by Khong at the meeting to refer to site and main contract drawings; he had asked but he was told there were no detailed drawings available. Further, the reason he did not discuss terms of payment at the meeting was because it was a preliminary stage of price negotiations and a lot of terms and conditions were not touched on. The defendants` fifth quotation was subject to and in anticipation of, terms and conditions being discussed and agreed. As for the sixth quotation, the plaintiffs had to accept the price of $3.6m as well as the eight (8) conditions stated therein before it can be said that the parties had a contract.

53 Joseph also disputed Fong`s version of their telephone conversation on 23 April 1998; he did not confirm the defendants` price at $3.6m but said that the defendants would prepare and fax to the plaintiffs their revised quotation that afternoon. That was why he was shocked/surprised when he received the plaintiffs` letter dated of 24 April 1998 stating that the plaintiffs had to be strict with equipment and material that has [sic] been approved by the Consultant and Owner. That was something new which had not been previously discussed and which would obviously affect the defendants` revised price of $3.6m; it was a development which he had to discuss with his management. While it was true he had asked Chua for `black and white confirmation` when the latter telephoned him on 23 and 24 April to start work and, the defendants did receive the plaintiffs` letters of acceptance and intent, Joseph insisted there was still no concluded contract because terms and conditions relating to payment, commencement and completion dates, maintenance and liquidated damages had

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yet to be discussed between the parties before not after, the contract was awarded. Joseph denied he had spoken to Khong on the telephone on the letter of intent and had requested amendments/deletions to para 4.

54 When it was pointed out by counsel for the plaintiffs that his letter to the plaintiffs dated 27 April 1998 did not object to but thanked them for, the letter of intent, Joseph explained that it was done as a formality/courtesy. He did not consider the letter of acceptance to be a confirmation of award either - it was too simple and no terms and conditions were spelt out. Joseph explained that the defendants` price of $3.6m was a mistake brought about by the error in the scale used in one of the drawings shown to him; it was not the defendants` mistake in measuring the cable length needed.

55 ***The findings***

56

57 I should first of all point out that the relationship and the dispute between the parties arose against a backdrop of the plaintiffs having to take over the contract of Build-Speed on an urgent basis, at Mindef`s request, in a matter of a few days, according to Fong. Consequently, there was not the usual time-frame under normal conditions, for the parties to negotiate and discuss terms and conditions; things had to be and were, done in haste. By Fong`s own admission, the letter of acceptance was prepared in a hurry to get the defendants to start work (N/E 24). One must therefore bear this factor in mind in considering the events which transpired around the period 22-23 April 1998.

58 Firstly, there was the meeting on 22 April 1998 between Joseph and the plaintiffs` management wherein Joseph had allegedly agreed to round down the

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price in the defendants` fifth quotation from $3.653m to $3.6m. Then, there was Fong`s evidence that on the morning of 23 April 1998 he telephoned Joseph and received an affirmative answer to his question if $3.6m was confirmed. The conversation was then followed up by the sixth quotation of the defendants reflecting the agreed price of $3.6m. Pausing there for a moment, it would appear that the plaintiffs` (in particular Fong`s) version of events should be accepted as accurate. Joseph`s version is not consistent with what actually transpired - he had claimed in his affidavit that he did not agree to the reduction in the defendants` price at the meeting as he needed to consult his fellow directors (although under cross-examination [N/E 177] he agreed with the plaintiffs` version). Yet Joseph produced no evidence to show that he held discussions with his other directors, not even with his niece Angela (Melvyn`s sister) before he instructed her to fax the sixth quotation to the plaintiffs on the following day. Accordingly, I find that Joseph must have agreed to reduce the defendants` price to $3.6m on 22 April 1998 and he confirmed the price the following morning in his telephone conversation with Fong. Otherwise he would not have used the words ***confirmed pricing*** in the heading for the sixth quotation. As at 23 April 1998 therefore, I am of the view that the parties had orally agreed on a price of $3.6m for the defendants` electrical subcontract works but there was no concluded contract as yet.

59 The next scenario to consider is whether the plaintiffs` letter of acceptance dated 25 April 1998 amounted to an acceptance of the sixth quotation. It is not disputed that the letter was faxed to the defendants at about 0923 hours that morning, to accommodate Joseph`s request for ***black and white*** confirmation. That letter states:

> *We are pleased to confirm the above subcontract work to your company based on your quotation (ref: KEC/QE/8448/98 dated*

> *23 April 1998) which is $3,600,000 (Singapore Dollars: Three Million and Six Hundred Thousand Only) excluding GST.*

60 If the letter of acceptance (as the plaintiffs contended in the alternative) amounted to an acceptance of the defendants` offer (or counter-offer) contained in their sixth quotation, then there is no necessity to consider the letter of intent which Khong subsequently faxed to the defendants two days later on afternoon of 27 April 1998 although it was dated 24 April 1998. If indeed there was a concluded contract as at 24 April 1998, further negotiations between the parties cannot nullify the contract (**Perry v Suffields Ltd** [1916] 2 Ch 187). Therefore, the letter of intent warrants consideration only if no contract was found to exist by the letter of acceptance. If either letter resulted in the formation of a contract between the parties, then the alternative defences put forward of mistake and misrepresentation will have to be considered to determine whether the contract was vitiated and the defendants are not liable to the plaintiffs for repudiating the same.

61 ***The law***

62

63 It would be appropriate at this juncture to refer to the basic rules for the formation of a contract. Both parties had in their submissions referred to ***Chitty on Contracts*** (27th Ed Vol 1) in which the learned author defined an offer (at p 90 para 2-002) as follows:

> *The offer is an expression of willingness to contract made with the intention (actual or apparent) that it shall become binding on the person making it as soon as it is accepted by the person to whom it is addressed. Under the objective test of agreement, an apparent intention to be bound may suffice, ie the alleged offeror (A) may be bound if his words and conduct are such as to induce a reasonable person to believe that he intends to be bound, even though in fact he had no such intention.*

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64 As for acceptance the learned author defined it as follows (at p 100 para 2-016):

> *An acceptance is a final and unqualified expression of assent to the terms of an offer. The objective test of agreement applies to an acceptance no less than to an offer. On this test, a mere acknowledgement of an offer would not be an acceptance; nor is there an acceptance where a person who has received an offer to sell goods merely replies that it is his `intention to place an order` ...*

65 Looking at the letter of acceptance in the light of the two definitions above, can there be any doubt that there was an offer made by the defendants by the sixth quotation and which was accepted by the plaintiffs without qualification? I think not. The letter of acceptance clearly referred to the sixth quotation and the price of $3.6m excluding GST. If the defendants were suing the plaintiffs for repudiatory breach of contract instead, I cannot imagine that the plaintiffs would succeed if they raise the defence that they did not mean to accept the defendants` offer by this letter. As a rule, the court looks at a document objectively without regard to the parties` subjective intentions.

66 Counsel for the defendants in his closing submissions (see para 23) had contended that there was no concluded contract between the parties because the following essential terms (7) had not yet been agreed:

67 i contract period;

68 ii payment terms;

69 iii dates of commencement and completion;

70 iv retention sum;

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71 v maintenance period;

72 vi liquidated damages;

73 vii variation claims.

74 The fact that the parties were still negotiating on the terms does not preclude a contract from being concluded. In this regard I refer again to ***Chitty on Contracts*** (supra) where the learned author states (at p 101 para 2-17):

> *Businessmen do not, any more than the courts, find it easy to say precisely when they reached agreement, and sometimes continue negotiations after they appear to have agreed to the same terms. In such a case, the court will look at the entire course of negotiations to decide whether an apparently unqualified acceptance did in fact conclude the agreement. If it did, the fact that the parties continued negotiations after this point does not affect the existence of the contract between them, unless the continued correspondence can be construed as an agreement to rescind the contract.*

75 Assuming for arguments` sake that both parties had proceeded on the basis that a contract had been concluded. If the plaintiffs later attempted to renege on the terms of payment in cl 2 of the sixth quotation (to contend that payment to the defendants should be based on progress of work done or on a milestone basis), such arguments would be held to be unsustainable as the plaintiffs had agreed to pay the defendants 30 days from date of submission of their claim.

76 Much time was spent on cross-examining the plaintiffs` witnesses (unnecessarily in my view) on the plaintiffs` letter dated 24 April 1998 signed by Chua (Chua`s letter) and faxed to the defendants on 25 April 1998 at 8.56am before the defendants` receipt of the letter of acceptance. That letter and its heading states:

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> *LE(D) - 066 CO1 - Redevelopment of Bedok Camp Equipment & Material Approval List*
>
> *Concerning with your works in Bedok Camp, please be informed that we have to be strict with equipment and material that has been approved by the Consultant and Owner.*

77 Did Chua`s letter as contended by counsel for the defendants, amount to a counter-offer by the plaintiffs to the sixth quotation and hence there was no acceptance of the sixth quotation?

78 In para 13 of his submissions, counsel for the defendants argued that Chua`s letter was tantamount to rejecting cl 7 of (as well as) the sixth quotation (see [para] 9 supra). On the other hand, counsel for the plaintiffs and their witnesses (Fong and Khong) argued that it was the industry norm for subcontractors to have the right to propose alternative materials although the plaintiffs were not obliged to accept such proposals. Accordingly, the plaintiffs submitted that Chua`s letter did not amount to a counter-offer but was in fact indicative of consensus between the parties on how to treat alternative materials.

79 It is noted that Chua`s letter made no reference whatsoever to the sixth quotation, neither did it state unequivocally that the defendants could not offer alternative materials. It is not disputed that Chua as the plaintiffs` project manager had/has no authority to conclude contracts for the plaintiffs; that authority lay with either Fong or Khong. Accordingly, Chua would have no authority to accept or reject the terms set out in, let alone, the sixth quotation. To interpret Chua`s letter to say that the plaintiffs thereby rejected cl 7 of the sixth quotation would be stretching its meaning to the extreme, bearing in mind that Fong was not even aware it had been sent out (N/E 20). That being the case, I am of the view that Chua`s letter did not amount to a rejection of or counter-proposal to, the defendants` offer contained in the sixth quotation, which was accepted by the letter of acceptance without qualification.

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80 I pause to consider whether the outstanding issues set out in [para] 48 above would make a difference to my findings. As I have already indicated in the same paragraph that the defendants` payment terms formed part of the contract, I need only consider the other remaining issues. What then of the contract period and the commencement and completion dates? The fact they were not spelt out does not necessarily mean that a contract was not concluded between the parties.

81 According to the learned author of ***Hudson`s Building and Engineering Contracts*** (11th Ed) Vol 2 at p 1105 para 9-001:

> *... Even if no date is specified, or if a contractual date for performance has lapsed due to prevention or breach by the other party ... there will be an implied requirement to perform the obligation within a reasonable time.*

82 There is no difficulty with identifying the commencement date as, the defendants had indicated in cl 8 of the sixth quotation (and which the plaintiffs accepted), that they would be able to mobilise their workers within three days from the date of confirmation of the letter of award, namely, on 27 April 1998. This fact was conceded by Fong under cross-examination (N/E 19) who agreed that his allegation that the defendants failed to commence work on 25 April 1998 was incorrect. Once the commencement date is identified together with a reasonable contractual period set by the court, there should be no difficulty in ascertaining the completion date. In any event it is more than likely that the defendants, despite the claims by Melyvn and Joseph to the contrary, knew the original practical completion date (11 October 1998) given to Build-Speed. Otherwise I cannot imagine how they could render a quotation to Build-Speed and expect to be awarded the contract for electrical works. I also accept the plaintiffs` evidence that Fong told Melvyn that Mindef had granted the plaintiffs four months` extension from the original completion date.

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83 It is noted that the sixth quotation made no mention of maintenance period after completion. However, it contained a breakdown of items with pricing and cl 6 entitled the defendants to claim for variations. That being the case, it would not be too difficult for a court to determine, in the event of dispute between the parties, whether an item of work is or is not a variation. ***Hudson`s*** (supra) has this to say (Vol 1 at p 902 para 7-041):

> *The general rule is that a contractor who has been requested to do work which is in fact a variation will be able to recover payment for it if the owner has himself expressly or impliedly requested the work knowing it to be such. The contractor, therefore, is unlikely to be in a difficulty in advancing, a variation claim unless either:*
>
> a the owner does not know of and so has not authorised the variation, or
>
> b the contract has been so worded as to deny legal effect to any request or authorisation by or on behalf of the owner or his architect/engineer which is relied on by the contractor.

84 As for payment for variation claims, again assistance can be sought from ***Hudson`s*** . The learned author (at p 960 para 8-001) states as a general principle that for construction contracts for which no price has been mentioned or agreed, the transaction will be subject to the implication of a reasonable price. ***Hudson`s*** went on to state (at p 1024 para 8-101 and 8-102):

> *Contractual liability to pay a reasonable price for construction work can come about in a number of ways. Thus if a request to carry out work and an intention to pay for it can be inferred from the circumstances between the parties, silence as to price will not necessarily prevent a contract coming into being, provided that the contract is otherwise sufficiently certain, and a term for payment of a reasonable price will be implied ...*
>
> *An agreement may also be partly silent as to price. The commonest example is the case where varied work has no counterpart in any schedule of rates of bills of quantities or other documents available for the valuation of variations. In such cases it has been submitted that, in many contracts at least, the contract intention under the `shopping list principle` may require*

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> *the variation valuation, whether of omissions or additions, to be carried out using as its basis such tendered prices as do exist, or the contractor`s general levels of pricing.*
>
> *This strictly contractual entitlement to be paid a reasonable price is frequently but incorrectly referred to, by lawyers as well as the industry, as quantum meruit.*

85 As the question of variation claims does not arise in the dispute between the parties, I need not consider whose testimony is more credible - Fong`s evidence that he told Joseph who agreed, that variation claims of the defendants would be paid on a back-to-back basis subject to 15% deduction for the plaintiffs` profit and attendance or, Joseph`s denial that there was any agreement on the subject.

86 As for the unresolved issues pertaining to retention sums, maintenance period and liquidated damages, the fact that the subjects had not even been raised as at 25 April 1998 did not mean that the parties had not come to an agreement. I would venture to say, had the issues of maintenance and retention sum come up for determination before me, I would have expected evidence to be adduced as to the custom and practices in the construction industry, that these were the usual terms to be incorporated in a construction contract. Fong had testified (N/E 23) that a retention sum was a `standard` condition in subcontracts. I shall deal with the issue of liquidated damages later as that is one item of the plaintiffs` claim for damages (para 8 (c) of the statement of claim).

87 Accordingly, I reject the defendants` submission that there could have been no concluded contract because the main terms and conditions had not yet been settled between the parties; I accept the submissions of the plaintiffs that there was indeed a contract between the parties as at 25 April 1998. In this regard I refer to an extract from ***Keating on Building Contracts*** (6th Ed) at p 21 cited by the plaintiffs:

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> *It is thought that agreement as to parties, price, time and description of works is normally the minimum necessary to make the contract commercially workable ...*

88 The learned author went on to state (at p 25) that once a contract comes into being, subsequent negotiations by either party seeking, for example, to obtain better terms will not affect the existence of the previously concluded contract.

89 A case in point cited by the plaintiffs is **Pagnan SpA v Feed Products Ltd** [1987] 2 Lloyd`s Rep 601 in which the plaintiff buyers had appealed against a decision of the lower court which held in favour of the defendant sellers, that the parties had entered into a binding contract for the sale and purchase of corn gluten feed pullets. In dismissing the plaintiffs` case at first instance, Justice Bingham had this to say (at pp 610-611):

> *The general principles to be applied in deciding the issue in this case are not, I think, open to much doubt. The court`s task is to review what the parties said and did, and from that material to infer whether the parties` objective intentions as expressed to each other were to enter into a mutually binding contract. The court is not of course concerned with what the parties may subjectively have intended ...*
>
> *...*
>
> *... Where the parties have not reached agreement on terms which they regard as essential to a binding agreement, it naturally follows that there can be no binding agreement until they do agree on those terms: see* ***Rossiter v Miller*** *[1878] 3 App Cas 1124 at p 1151 per Lord Blackburn. But just as it is open to parties by their words and conduct to make clear that they do not intend to be bound until certain terms are agreed, even if those terms (objectively viewed) are of relatively minor significance, the converse is also true. The parties may by their words and conduct make it clear that they do intend to be bound, even though there are other terms yet to be agreed, even terms which may often or usually be agreed before a binding contract is made: see* ***Love v Stewart*** *per Lord Loreburn LC at p 476. As Lord Cozens-Hardy MR in* ***Perry v Suffields*** *[1916] 2 Ch 187 said (at p 192) approving the headnote in* ***Bellamy v Debenham*** *[1890] 45 Ch D 481:*

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> *`Though, when a contract is contained in letters, the whole correspondence should be looked at, yet if once a definite offer has been made, and it has been accepted without qualification, and it appears that the letters of offer and acceptance contained all the terms agreed on between the parties, the complete contract thus arrived at cannot be affected by subsequent negotiation. When once it is shown that there is a complete contract, further negotiations between the parties cannot, without the consent of both, get rid of the contract already arrived at.`*

90 The above dicta from Lord Cozen-Hardy`s judgment aptly applies to the plaintiffs` letter of intent the first version of which was faxed/posted to the defendants on 27 April 1998 although it was dated 24 April 1998. Khong had testified that had he known of the letter of acceptance sent out by Fong, this letter would not have been sent out at all (N/E 80). In the light of my decision that the letter of acceptance resulted in the formation of a contract between the parties, I hold that the letter of intent has no effect on the agreement already reached between the parties; certainly the plaintiffs were not in a position to impose terms which contradicted those they had accepted in the sixth quotation. Similarly, the defendants` letter dated 27 April 1998 adds nothing to or detracts from, the agreement already reached. The defendants` said letter raised a number of queries before they could ***proceed with any work on site in order that future disputes can be minimised*** (see AB 75-76). I do not see how it can have any effect on the letter of acceptance.

91 Even on the principle of the `battle of forms`, I am of the view that there was a concluded contract as at 25 April 1998. This expression refers to an offer followed by a series of counter-offers where each party successively seeks to stipulate different terms, often their own standard printed terms. In some cases the battle is won by the man who fires the last shot, the other party being taken to have agreed his terms by conduct in proceeding to perform the agreement without objection. Sometimes agreement is reached by an amalgamation of both

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parties` proposed terms and conditions construed together (see ***Keating*** at p 19).

92 ***Mistake***

93

94 Next I turn to the other defences put forward by the defendants starting with mistake. According to their counsel`s closing submissions, even if there was a concluded contract between the parties, the defendants should be discharged from liability because the parties were negotiating at cross purposes - the defendants thought they were contracting on a `design and build basis` whereas the plaintiffs thought it was on a `contingent` or `confirmed` design basis.

95 Dealing with the contingent basis issue first, that defence arose out of the letter of intent where Khong used the words ***provisional subcontract sum of $3,600,000*** . As I have already held that that letter had no effect as the contract between the parties was concluded on 25 April 1998, I need not consider this defence other than to say that it has no merit.

96 The law on mistake is very clear. For the defendants to avoid the agreement on this ground, they must prove (besides the fact that the mistake was one of fact) that the parties were genuinely not ad idem. The intention of the parties, according to ***Chitty on Contracts*** (27th Ed Vol 1 p 307 para 5-020) is, as a general rule, to be construed objectively. The learned authors went on to state (at para 5-021):

> *... The language used by one party, whatever his real intention may be, is to be construed in the sense in which it would be reasonably understood by the other, or at least in the sense in*

> *which a reasonable person would construe it ... In most cases the application of the objective test will preclude a party who has entered into a contract under a mistake from setting up his mistake as a defence to an action against him for breach of contract. If a reasonable man would have understood the contract in a certain sense, then, despite his mistakes, the court will hold that the mistaken party is bound. But where parties are genuinely at cross-purposes as to the subject-matter of the contract and the terms of the offer and acceptance are so ambiguous that it is not possible to point to one or other of the interpretations as the more probable, the court must necessarily hold that no contract exists ...*

97 Further at para 5-022 ***Chitty*** states:

> *A mistake as to the terms of the contract, if known to the other party, may avoid the contract.*

98 To determine the merits of this defence, it is necessary for a start, to compare the quotation which the defendants submitted to Build-Speed (Build-Speed`s quotation) with the sixth quotation. Build-Speed`s quotation (dated 9 December 1996) was priced at $4,413,000. Less the first three (3) items therein which the plaintiffs indicated they would supply, namely, (i) the transformer; (ii) the switch-gear; and (iii) the generator-set, Build-Speed`s quotation would be reduced by $656,000 to $3,757,000. Item 18 of that quotation which was for ***working drawings, shop drawings, as-built drawings*** , ***OMM*** was priced at $128,500. A similar item appeared in the sixth quotation (item 16) priced at $118,000 for ***preliminaries, design, co-ordination, working drawings, shop drawings, as-built drawings, operational manual*** .

99 Melvyn had agreed (under cross-examination) that the defendants did not specifically quote to Build-Speed on a `design and build` basis, neither was he asked by Fong to quote to the plaintiffs on a `design and build` basis. He further agreed that the fact the defendants could quote meant that they knew the scope of works required for the project. He contended however that Build-Speed

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had told the defendants to quote on a `design and build` basis and items 18 and 16 covered the design aspect. He had told Fong at the site on 15 April 1998 (although not at the meeting on 18 April 1998) that the reason for the high price of the drawings was because it was a `design and build` contract. As the defendants quoted on a `design and build` basis, Melvyn claimed that he would not ask for electrical plans from either Build-Speed or CMP. As for Joseph, he had admitted (under cross-examination) that he did not give Chua a copy of the Build-Speed quotation despite which he maintained that Chua had requested a quotation on the same basis as the defendants` quotation to Build-Speed.

100 From the above evidence, I am not convinced that the defendants` agreement with the plaintiffs was premised on a `design and build` basis. The electrical plans produced in court were those done by Lung Ping, examples being AB 189 and 190 (dated September 1997) which had been seen by both Melvyn and Joseph. I cannot imagine why the plaintiffs would require/request the defendants to quote on the same basis as the latter had quoted to Build-Speed when, at the material time, the plaintiffs had not even seen the Build-Speed quotation and, electrical plans had already been prepared by Lung Ping. I reject the testimony of Melvyn and Joseph in this regard as being inherently incredible. Even if item 16 in the sixth quotation can be said to cover the design aspect of the electrical works, that in itself comprised seven items for the all encompassing figure of $118,000. How would the plaintiffs know how much of that sum was allocated to design cost? It is stated in ***Hudson`s*** (at p 242 para 2.004) that:

> *the practice in the building industry is for working drawings to be prepared after contract drawings have been drawn up, as the latter are of a fairly general character, their primary purpose being to enable prices to be obtained, and the standard forms all contemplate the issue, after the contract is signed, of further drawings and details - called in the industry working drawings - which will be needed whether or not the work is varied.*

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101 That would mean that the defendants would in due course receive additional plans over and above contract drawings, from either Lung Ping and or CMP; it may not be necessary for them to prepare the working drawings themselves. As I understand it, `as-built drawings` in the building industry refer to drawings which are updated from previous drawings reflecting, as the term implies, what has actually been constructed and which are required to be submitted to the authorities. That task was unlikely to be assigned to the defendants as they did not prepare the original contract drawings.

102 Therefore, the defendants have failed to satisfy me that there was a mistake or ambiguity in the terms of the contract, or that their mistake was known to the plaintiffs or that the parties were negotiating at cross-purposes.

103 ***Misrepresentation***

104

105 I move next to the defence of misrepresentation. The defendants alleged in their defence that the plaintiffs had misrepresented that the contract would be on a `design and build` basis. In the light of my comments in paras 62-65 above, I find no such representation was ever made by any of the plaintiffs` representatives.

106 The defendants` second complaint related to the erroneous scale used in one of the drawings in particular AB 189 (which is the same as AB 190) which Melvyn and Joseph inspected at site office. It was not disputed by the plaintiffs that the scale should have been 1:500 instead of 1:200. According to Joseph, the error would have caused the defendants to incur a loss of over $600,000 as the sixth quotation was thereby under-priced.

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107 For the defendants to succeed on the defence of misrepresentation, they must prove that:

108 (i) the plaintiffs made a statement of fact, past or present, as distinct from a statement of opinion or of intention, or of law;

109 (ii) the statement was relied on by the defendants;

110 (iii) the defendants were thereby induced to enter into a contract with the plaintiffs;

111 (iv) the defendants suffered a loss.

112 Have the defendants discharged the burden of proof in this case? I think not - the plaintiffs were not the maker of the drawing (AB 189/190) which contained the wrong scale. On the evidence, there is no doubt that the plaintiffs were themselves unaware of the error until alerted by Joseph at the meeting on the evening of 28 April 1998. As stated in [para] 42 above, the plaintiffs took over the project at very short notice and were unlikely to have studied any of the existing drawings in any great detail. Consequently, the plaintiffs were not the authors of the defendants` alleged misfortune. The defendants had relied on ss 2(1) and 2(2) of the Misrepresentation Act (Cap 390) (see para 16 of the defence). That plea in itself recognised the fact that the alleged misrepresentation may well have been innocently made by the plaintiffs.

113 It bears mentioning that the defendants were more familiar with site conditions and consequently, should be more familiar with the drawings than the plaintiffs, by reason of having done work to the value of $165,000 for Build-Speed, before the plaintiffs took over the project. Further, it would appear that

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the work the defendants carried out for Build-Speed was item 14 of the Build-Speed quotation which states:

> *Complete telephone system c/w necessary manholes and pvc lead-in pipes.*

114 Such underground cable works imply that the defendants must have had a set of drawings from Build-Speed to carry out the construction but no such evidence was adduced. Instead, Joseph repeatedly maintained that the defendants quoted to Build-Speed on a `design and build` basis which consideration is irrelevant to the works in item 14.

115 I turn next to the drawings at AB 189/190 (which are one and the same) numbered LPE/BC/ES/01 on a scale 1:200 and titled/particularised as:

> Electrical Installation
>
> Site office
>
> External services (ES)
>
> External cable route layout for electrical security & fire protection system

116 The drawings contained this legend:

.....	UPVC	pipes for electrical cables
.....	UPVC	pipes for security & fire protection cables

117 Cross-examined, Joseph had testified that when he compared AB 190 with AB 191, he realised that the former had the wrong scale (N/E 211). It was pointed out to him that AB 191 showed the site plan for external lighting works, based on a scale of 1:500 and had nothing to do with AB 190. Joseph however contended that both plans related to electrical installations, which contention I

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reject. In the light of my comments in [para] 70 above, I am of the view that the defendants` excuse of the wrong scale being used in AB 189/190 is untenable. According to ***Keating*** (at p 141):

> *It has been frequently held that the mere inclusion of plans, bills of quantities and specification in the invitation to tender does not show that the employer is warranting their accuracy. The same rule has been applied even where such statements have been incorporated in schedules to the contract. The principle upon which these decisions are based is that a contractor who has undertaken to complete a whole work such as a house, a railway line or a bridge, should satisfy himself that any statements about the amount of work involved, or the condition of the site, or the methods of carrying out the work are accurate and practicable; he is not therefore entitled to assume that such statements are warranties. He can accept them as honest representations made by skilled persons, but beyond that, they do not go.*
>
> *The preceding paragraph, largely based on nineteenth century cases, was quoted with apparent approval in a 1972 Australian case. It is thought that the paragraph still states the law but that it has to be read subject to considerations arising from the Misrepresentation Act and the law about collateral warranties and negligent misstatement.*

118 The caution expressed in the second paragraph quoted above will not apply to our case as the plaintiffs did not prepare drawings AB 189/190.

119 Having considered each of the defences in turn, I find that the defendants have not succeeded on any of them. Accordingly, I award interlocutory judgment to the plaintiffs on their claim with costs to be taxed on a standard basis. The Registrar shall assess damages due to the plaintiffs arising from the breach of contract by the defendants with the costs of such assessment to be reserved to the Registrar. Such damages shall include liquidated damages if the plaintiffs succeed in proving to the Registrar, that the defendants were told or well knew, that $3,000 per day were the liquidated damages specified under the main contract.

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120 **Outcome:**

121 Plaintiffs` claim allowed.

Lai Siu Chiu J

Michael Chia Peng Chuang (Drew & Napier) for the plaintiffs
Thio Shen Yi and Yvonne Wong (Thio Su Mien & Partners) for the defendants

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