IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 259

Suit 1432/1998

Between

Lian Soon Construction Pte Ltd

… *Plaintiff*

And

Guan Qian Realty Pte Ltd (No 2)

… *Defendant*

GROUNDS OF DECISION

Building and Construction Law — Standard form contracts; Building and Construction Law — Architects, engineers and surveyors

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Lian Soon Construction Pte Ltd v Guan Qian Realty Pte Ltd (No 2)

[1999] SGHC 259

Suit 1432/1998
Warren Khoo L H J
02 October 1999

1 : By this action, the plaintiffs, the main contractors of a building project, claim against the defendants, the employers, outstanding amounts under interim certificates issued by the architect. On an application by the plaintiffs, the learned assistant registrar Ms Hoo Sheau Peng gave summary judgment in favour of the plaintiffs in the sum of $2,212,435.63 with interest and costs. This is an appeal against that decision.

2 The contract between the parties incorporated the Singapore Institute of Architects standard form of articles and conditions of contract (4th Ed). The contract was for the building of a 10-storey block of residential apartments and communal facilities at Kim Yam Road at a lump sum of some $6.8m. It included the construction of an electrical sub-station. The contract period was 16 months from 26 April 1996. In the letter of award, the completion date for the sub-station was shown as 26 January 1997 and that for the main building was shown as 25 August 1997. The letter of award also provided for liquidated damages at the rate of $1,000 a day for delay in completing the sub-station and $10,000 a day for delay in completing the main building works. The articles and conditions

of contract, however, provided for one completion date (25 August 1997) and one set of liquidated damages, at $10,000 a day for the `whole works`.

3 The conditions of contract provided for the issue by the architect of interim certificates for payment at monthly intervals. They also provided for the honouring of interim certificates within 21 days from the date of receipt by the employer. On various dates between August 1996 and June 1998, the architect issued a total of 17 interim certificates for payment. Most, if not all, of these were issued late, and most, if not all, of those that were issued were paid late, if paid at all. Of the 17 that were issued, only ten were paid. Certificates No 11 to 17, which were issued on various dates between November 1997 and June 1998, were not paid at all.

4 On 24 August 1998, the plaintiffs took out the writ in this action claiming the sums due under the unpaid certificates. On 7 September 1998, they filed the application for summary judgment. On the next day, 8 September, their solicitors wrote to the defendants. They referred to the defendants` long outstanding default in honouring these certificates; they said that this amounted to a repudiatory breach of the contract; they told the defendants that the plaintiffs accepted the repudiatory breach and that the contract had thus been terminated.

5 The application for summary judgment was scheduled to be heard on 16 October 1998. Three days before that, on 13 October, the architect purported to issue two delay certificates, one in respect of the main building, and one in respect of the sub-station. In respect of the main building, the architect purported to certify that the contract completion date was 25 August 1997; that he had allowed an extension of time of 52 days; and that the plaintiffs were in default in not having completed the works as of 8 September 1998. In respect

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of the sub-station, the architect purported to certify that the contract completion date was 26 January 1997; that no ground existed for any extension of time; that the actual completion date was 22 August 1997; and that the plaintiffs were in default in not having completed the works by the stipulated completion date of 26 January 1997. The architect also worked out a computation of the liquidated damages allegedly due in respect of the main building and the sub-station as a result of the certified delays: $3.27m in respect of the main building and $209,000 in respect of the sub-station, making a total of $3.479m. The defendants relied on these purported certifications and computations, among other things, as set-offs in the summary judgment proceedings. The assistant registrar rejected these cross-claims, and gave judgment to the plaintiffs in terms stated above.

6 The only issue in this appeal is to what extent, if at all, should effect be given to the delay certificates purportedly issued.

7 ***Extension of time: validity***

8 Completion date - extension of time - delay certificate - liquidated damages: these are closely related subjects. The relevant provisions are found in cll 22 to 24 of the SIA general conditions of contract. Clause 22, in so far as relevant, provides that the contractor shall complete the works by the completion date or by the date extended in accordance with cl 23. Clause 23(1) sets out, in paras (a) to (p), a catalogue of events, instructions and directions by reason of which the contract completion date may be extended. Clause 23(2) provides for the procedure for notification of claims for extension of time and the architect`s duty in respect of such notifications. At the relevant time, it provided as follows:

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> *It shall be a condition precedent to an extension of time by the Architect under any provision of this Contract including the present clause (unless the Architect has already informed the Contractor of his willingness to grant an extension of time) that the Contractor shall within 28 days notify the Architect in writing of any event or direction or instruction which he considers entitles him to an extension of time, together with a short statement of the reasons why delay to completion will result. Upon receipt of such notification the Architect shall inform the Contractor in writing within 1 month of its receipt whether or not he considers the event or instruction or direction in principle entitles the Contractor to an extension of time.*

9 Clause 23(3) then provides as follows:

> *As soon as any delaying factor in respect of which an extension of time is permitted by the Contract has ceased to operate and it is possible to decide the length of the period of extension beyond the Contract Completion Date (or any previous extension thereof) in respect of such matter, the Architect shall notify the Contractor of his decision and estimate of the same, provided that where two or more such factors are operating concurrently the Architect need not so notify the Contractor until the last of such matters has ceased to operate.*

10 So, the procedure is: if the contractor wishes to claim any extension of time on the ground that the works are being delayed by any of the factors set out in cl 23(1), he is required to give written notice of it to the architect within 28 days of the occurrence. The architect, on the other hand, is required to let the contractor know within one month after the notice whether he is agreeable, in principle, to the extension required. And, then, as soon as the delaying factor ceases to operate and he is able to decide the length of extension, he must tell the contractor how much extension he has decided to allow.

11 ***Extension of time: the facts***

12 Unfortunately, the scheme set out in these clauses of the contract was not followed by the parties, principally in that the claimed delay events were not notified and dealt with as and when they arose. In their first letter to the architect

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dated 22 November 1996 on the subject of time extension, the plaintiffs merely referred in general terms to their intention to seek extension on account of some changes of design and stoppage of work. The letter read as follows:

> *Re: Extension of time and cost*
>
> *[We] would like to inform your good self that we would be seeking for extension of time and also the cost involved due to the changes in design [to] the basement and the first story. We will also seek the same for the stoppage of work due to the stop work order. The details would be submitted as soon as possible.*

13 The architect responded in terms of what appears to be a standard form of a letter in response to requests for extensions of time. His letter of 25 November 1996 to the plaintiffs read as follows:

> *... In filing notice, we draw in particular, your attention to cl 23 of the SIA Articles and Condition of Building Contract which obliges you to advise and forward to us the following:*
>
> 1 The material circumstances leading to the cause/causes of delay.
>
> 2 Identify the appropriate events (to support the delay).
>
> 3 The particulars of the effect of the delay, ie re-programming (by providing a Critical Path Programme).
>
> 4 In your programme, highlight out-of-sequence working especially in regard as to why other programme of work cannot be proceeded with
>
> 5 And how (sic) of the above have affected the consequential effects of production and handing over.
>
> *In addition, you are to show and demonstrate that you have constantly used your best endeavour and diligence to prevent delay in the progress and completion of the works.*
>
> *Until we are in receipt of the above, your request for [extension of time] can then be duly considered.*

14 On 5 February 1997, the plaintiffs wrote to the architect setting out a detailed list of design and construction details and information said to be

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outstanding from the consultants. They complained about the delays in the issue of drawings and details, frequent changes to and discrepancies in the drawings and details. In a two-page attachment, they set out these delays and alterations, as well as delays due to other contractors` works. Although there was no express request for extension of time, the plaintiffs stated:

> *In view of the above-mentioned, it is very crucial to arrest and rectify the problems. These problems have been with us since the start of the contract and if these were to persist, we believe it will have a very great impact on the completion time.*

15 For reasons not apparent on the record, the matter was laid to rest until 17 June 1997. At a site meeting on that date, to quote the minutes, the plaintiffs were

> *reminded to submit a proper itemised claim for extension of time or a `catch-up` programme with 25 August 1997 as the completion date.*

16 At this time, the project appears to have been behind schedule. Apparently, the plaintiffs had submitted a revised programme of work. The architect is recorded as having commented that the revised programme was not in order as it was based on an extension of time of four months and one week.

17 The minutes of a site meeting on 1 July 1997 repeated these comments and reminder. At the site meeting of 29 July 1997, the plaintiffs were reminded:

> *to submit claims for extension of time one month before the contractual completion date.*

18 In response to this, on 4 August 1997, the plaintiffs submitted their request for extension of time of 155 days. In a five-page attachment, the plaintiffs gave details of the matters for which they claimed extension with the number of days requested against each item except those which were shown as pending. This was a far more detailed submission than any that had been made.

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But the architect still issued a reply, mindlessly it seems, in exactly the same terms as those of his letter of 25 November 1996, set out above, in response to the plaintiffs` earlier and general intimation. In response, the plaintiffs submitted further details on 22 August 1997.

19 On 16 September 1997, the architect asked the plaintiffs to provide a critical path programme within seven days to show how the works had been affected by the events set out in the plaintiffs` submission. On 16 October 1997, the architect told the plaintiffs that unless the critical path programme was received within seven days, `we will consider that the events you cited had not been on the critical path, and we will evaluate accordingly.` On 31 October 1997, the plaintiffs submitted what they considered to be a critical path programme, but the architect told them it was not what he required. He repeated his request for a critical path programme. The plaintiffs did not respond.

20 Nothing was heard further from the architect about the matter until 13 October 1998, almost a year later, when, as stated above, the architect purported to extend the time for completing the main building by 52 days, and issue the delay certificates.

21 ***Validity of extension of time: general considerations***

22 Clause 23(2) of the general conditions contemplates notification to the architect within 28 days of the occurrence of the event for which the contractor claims extension of time. It is plain that the plaintiffs did not comply with this condition. However, I do not think that this non-compliance is of any consequence. In the events that happened, as outlined above, the architect had obviously waived this requirement. The question remains whether the architect,

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on his part, has exercised his power to extend time properly and in accordance with the contract.

23 It is often thought that extension of the contract completion time is for the benefit of the contractor. One often speaks of the architect `allowing` or `granting` an extension. But extension of time, more importantly, is for the benefit of the employer. This is because where there is any prevention by the employer of the contractor`s performance of the contract and the contract does not provide for extension, or if it so provides but extension is improperly withheld, the contractual date for completion will cease to apply, and the employer`s entitlement to liquidated damages, if any, is gone; his remedy for the contractor`s delayed performance, if any, is confined to general damages, which in most cases would be more difficult to prove than are liquidated damages.

24 The general scheme of the SIA general conditions is that interim certificates for payment are to be honoured; that they are to be given `temporary finality` in that summary judgment may be obtained on them; and that no deductions may be made on account of matters like liquidated damages except on the certification of the architect. A decision on extension of time is the foundation for a delay certificate, on the basis of which liquidated damages are deductible from moneys owed to the contractor.

25 The decision of an architect in the matter of extension of time may therefore give rise to a right of deduction, and that may seriously affect the cashflow position of the contractor. The court will therefore scrutinise the manner in which this power is exercised more closely than it would, for instance, in the case of the exercise of the power to issue payment certificates. Counsel for the plaintiffs reminded me that in **Aoki Corporation v Lippoland**

(Singapore) Pte Ltd [1995] 2 SLR 609 , I had occasion to make the following remarks with reference to interim certificates and extension of time certifications under the SIA conditions of contract. I said:

> *Progress payments are the lifeline of a building contractor`s business. The object of giving interim payment certificates temporary finality is to enable the contractor to be paid during the progress of the works so as to minimize cash flow problems. His entitlement to be paid is not to be resisted on the ground of any cross-claims by the employer. No such cross-claims will be allowed unless they are certified by the architect in accordance with the contract. Needless to say, the architect must exercise his function as the certifier in good faith and to the best of his uninfluenced professional judgment, even though he is usually appointed by the employer. Otherwise, the object of the provisions for temporary finality could be defeated. It would be no comfort to the contractor that he could ventilate his dissatisfaction before an arbitrator, with all the time, trouble and expense that this entails. From this point of view, the court in summary judgment proceedings on the interim certificates will always, when invited to do so, try as far as possible to see whether a certificate which has the effect of derogating from the contractor`s entitlement to be paid, has been properly issued.*

26 See also ***Hudson`s Building and Engineering Contracts*** (11th Ed) para 10-075, and cases referred to there.

27 There are two decisions that the architect has to make in the matter of extension of time under the SIA general conditions. First, under cl 23(2), he has to decide whether in principle the contractor is entitled to the extension he applies for. This he must do within one month after receipt of the application. Secondly, under cl 23(3), if he considers that a delaying event entitles the contractor to an extension, he has to decide the length of the extension. He has to do this as soon as the delaying event has ceased to operate and it is possible to decide it.

28 The architect has a duty, coextensive with his power, to make such decisions. He must perform his duty, or exercise his power with reasonable

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diligence and in accordance with the contract. His decision must also be clear and unequivocal, so that the parties know where they stand in terms of their rights and obligations under the contract. In this connection, I find most apt what Roskill J said in **Token Construction Co Ltd v Charlton Estates Ltd** [1973] 1 Build LR 48 at 58:

> *It is important to appreciate that the architect, when acting or purporting to act under either condition 2(e) [extension of time] or condition 16 [delay in completion], or indeed under any other empowering clause or condition in this contract, is exercising a power which affects the contractual rights of the parties to the contract by varying those rights in one or more ways as the parties have agreed should be the case. It is therefore of crucial importance that any exercise of power by the architect should be done clearly and unambiguously so that the parties know where they are and should not be left in doubt or indeed in dispute as to their consequent mutual rights and liabilities after the exercise or purported exercise of this power.*

29 Although his Lordship addressed these remarks to the contents of the architect`s letter alleged to be the certification, I think his remarks apply equally to the performance of the architect`s certification function as a whole. The architect must make it clear within the time provided in the contract or, where no time is provided, within a time which in all the circumstances is reasonable, whether he has made a decision and what is the decision.

30 As the architect`s decisions on extensions of time have such significant financial implications on the parties, it seems that once he has made a decision, he is not permitted without exceptionally good reason to change it. This is implicit in cl 31(4) of the SIA general conditions which provides that a delay certificate cannot be corrected. It reads as follows:

> *The Architect shall have power to issue a further Interim Certificate at any time, whether before or after completion, correcting any error in an earlier Interim Certificate (but not any Delay, Termination of Delay, Further Delay or any certificate other than an Interim Certificate) or dealing with any matter of*

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> *which he was not aware, or which should have been dealt with, at the time of an earlier Interim Certificate, or revising any decision or opinion on which that Certificate was based.*

31 The position is illustrated in **Tropicon Contractors Pte Ltd v Lojan Properties Pte Ltd** [1989] SLR 610 [1989] 3 MLJ 216 . There, the architect had in the course of the contract given the contractors extensions of time totaling nine months. Subsequently when the contractors applied for summary judgment on interim payment certificates, the architect purported to change his decision on extension of time, reducing it from nine months to 17 days. He purported to then issue a delay certificate enabling the employers to deduct liquidated damages, with the effect of nullifying the contractors` claim on the interim certificates. It was held by LP Thean J (as he then was) that the purported revision of extension of time was invalid; so was the purported delay certificate.

32 In this case, the processing of the application ended with the impasse about the submission of a critical path programme. Although the architect had intimated that in the absence of such a programme, he would assume that the events relied on did not fall within the critical path and he would `evaluate accordingly`, he left the matter in limbo. For a whole year, he did not indicate one way or the other his position in regard to the plaintiffs` application. He simply kept quiet. So, he either failed to perform his duty or exercise his power to decide the extension of time, or, equally unsatisfactorily, he left the position in regard to this matter quite ambiguous and uncertain.

33 ***Critical path programme***

34 Why did the architect take a whole year before he came up with his decision? Taking such a long time over it and making a decision in the midst of the plaintiffs` summary judgment applications clearly call for some explanation.

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The architect`s main explanation is that without a critical path programme, it was difficult for him to assess the plaintiffs` application for extension. He says that the plaintiffs did not set out how these alleged delays were related to each other, how they affected the overall completion and how the correspondence supported their claim. He says that that was why a critical path programme was required.

35 Mr Tan Chye Heng, who has nearly 20 years of experience as an architect and who has held senior positions in the architects` professional body, the Singapore Institute of Architects, points out that cl 23 does not require the submission of a critical path programme. The clause in force at the relevant time merely required the submission of a `short statement of the reasons why delay to completion will result.` He is also of the opinion that an architect does not need a critical path programme for the purpose of deciding applications for time extensions. He points out that under cl 4 of the SIA general conditions, the contractor is required to submit at the commencement of the contract a programme showing the order and sequence in which he proposes to carry out the various parts of the works within the contract period. The plaintiffs in the instant case did submit such a programme at the time. It was also submitted with the plaintiffs` extension of time application. Mr Tan says that that programme, together with the architect`s own assessment of the progress of the works on site, should be enough to enable the architect to assess the appropriate extensions.

36 It is perhaps not necessary for me to come to any final view on the merits of these contentions about the need or otherwise of a critical path programme. But it does seem to me that Mr Tan`s view makes much sense. What is involved in a time extension exercise is, basically, to assess how much more time the contractor should fairly and reasonably be entitled to have beyond the time

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initially allowed by the contract to complete the works as a result of the delay events which have occurred. The architect is required to make a fair estimate and assessment, and not to give a precise arithmetic calculation. Note the use of the word `estimate` in cl 23(3). Mr Tan is right to point out that there was no requirement in cl 23 for a critical path programme. Even in the current, revised, version of the clause, all that is required is the submission of a `sufficient explanation` of the reasons why delay to completion will result. The assessment of extension is within the competence and expertise of the architect. He has to do his best with the submission of the material required by the clause to be submitted, and should not shift the responsibility to the contractor. It has not been suggested that the plaintiffs` submissions in the instant case fell short of the requirement of cl 23(2). What the architect seems to say is that the contractor should undertake an analysis of the inter-relationship between all these events and the consequent impact on the over-all completion date. That, with respect, seems to me to be within the architect`s own responsibility and competence, rather than the contractor`s.

37 In **Aoki Corporation v Lippoland (Singapore) Pte Ltd** [1995] 2 SLR 609 at p 615, I cited the following paragraph from the architect`s affidavit for the reason given by the architect for not having given the in-principle intimation under cl 23(2) in time:

> *... in assessing the question of delay, one has to consider whether the alleged event relied on by the contractor falls on the critical path. Briefly, the critical path comprises the sequence of activities in a construction programme in which a delay would have the effect of prolonging the overall completion period of the project. Delay to activities falling outside the critical path may be absorbed by the `float time` allowed in the programme so that the activity will not affect the completion date*

38 This passage, cited without comment, might give the impression that the court approves the suggestion that a critical path programme is generally

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necessary for the purpose of evaluating extensions of time. I must point out that there was no argument on the point. The suggestion in the last sentence of the passage quoted above to the effect that delaying factors outside the critical path programme might be absorbed by the `float time` allowed in the critical path programme might not be consistent with the basic position at law that the contractor is entitled to have the time initially allowed him by the contract to complete the works initially comprised in the contract, and any `float time` which he has within that over-all time is his for him to use to make up for any delays on his part in executing the works. It is arguable that the float time is in principle not available for accommodating variations and delays emanating from the employer or other delay events in respect of which the contractor is entitled to extension under the contract.

39 As I said, I do not need to reach a final view on the matter. The point is better left for full exploration on other occasions.

40 What needs to be noted in this case is that despite his avowed need for a critical path programme, the architect then purported to assess the extension, nearly a year later, and purported to give an extension of 52 days. He has not explained how he has been able to do this, apart from saying that this was based on the best available information he had in spite of the lack of the critical path programme.

41 More significantly, the architect has not explained why he required a whole year to make the decision. On the face of it, he appears to have not complied with the provisions of cl 23(3) as to when he should have made a decision.

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42 The defendants rely on the ***Aoki*** case to say that a delay in the issue of a delay certificate is not fatal to the employer`s right to rely on it. I have to point out that the sole point decided by that case was whether the architect`s failure to give his in-principle intimation under cl 23(2) had the effect of nullifying his decision on the extension of time which he eventually gave. In that case, I accepted the architect`s explanation for the delay, and held that the failure to give the in-principle intimation did not have the effect of invalidating the time extension and the delay certificate which was issued three months after the last extended date for completion. I cannot see how that case can assist the defendants in the circumstances of the present case.

43 To sum up, the architect failed to act upon the plaintiffs` application for time extension; he failed to make a decision or to make it in time; and he seems to have taken one position at the time of receipt of the application (that he would not or could not grant any extension) and another a year later (that the plaintiffs were entitled to a 52-day extension).

44 For these reasons, I am of the view that the architect has not exercised properly his power in respect of the matter of extension of time and delay certificate. The purported decision on the extension and the delay certificate is a nullity for the purpose of these summary proceedings. If the plaintiffs have been guilty of delay in the performance of the contract, it is a matter for arbitration, as provided for in the contract. It cannot be set up in answer to the plaintiffs` claim on the interim certificates in these summary proceedings. In accordance with cl 31(11) of the general conditions, the interim certificates enjoy temporary finality, and must be given effect by summary judgment.

45 ***The technical objections***

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46 Apart from this main objection to the delay certificate, plaintiffs` counsel raises other objections, some of a more technical nature. I do not think I need to deal with them all; I will deal with only some of them. As stated above, the architect purported to issue two delay certificates, one for the main building and one for the sub-station. In respect of the main building, the purported certificate states as follows:

> *Pursuant to cl 24(I) of the Conditions of Contract, I hereby certify that the Contract Complete Date was 25 August 1997; that pursuant to cl 23 of the Conditions of Contract I have allowed extension of time for completion by a total of 52 days; that no grounds exist for any further extension of time to the Main Contractor Lian Soon Construction Pte Ltd and that the Contractor is and has been in default in not having completed the Works as at 8 September 1998 now certified by me.*

47 The certificate in respect of the sub-station states as follows:

> *Pursuant to cl 24(I) of the Conditions of Contract, I hereby certify that the contract Completion and Hand-over Date was 26 January 1997, that no grounds exist for any further extension of time to the Main Contractor, Lian Soon Construction Pte Ltd; and the actual completion and handover of the works was 22 August 1997 and that the Contractor was in default in not having completed the Works by the date of 26 January 1997 as stipulated in the Letter of Award dated 18 July 1996.*

48 As alluded to earlier, the letter of award provided that the contract period was 16 months; the date of commencement was 26 April 1996 and the date of completion was 25 August 1997. It was provided that the completion date for the sub-station was 26 January 1997. It was then provided that liquidated damages should be payable in respect of the main building works and services at the rate of $10,000 per day and in respect of the sub-station at the rate of $1,000 per day. So the letter of award provided for phased completions of the two parts of the works.

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49 However, in the Appendix to the articles and conditions of the contract, the provisions for phased or stage completion of the works (cl 25) are shown as `Not Applicable`. Instead, the liquidated damages for the `whole works` are shown as $10,000 a day. There are thus no separate provisions for the main building works and the sub-station.

50 Plaintiffs` counsel contends that since cl 25 has been rendered inapplicable, the architect has no power to issue two different delay certificates, or to impose two different sets of liquidated damages as a result.

51 I find it difficult to accept this submission. Firstly, I do not think I can ignore the letter of award and rely solely on the articles and conditions of contract (particularly the Appendix). Article 6(f) of the articles provides that the contract documents shall include, in addition to the articles and conditions themselves, such other letters or documents, including the letter of acceptance, as the parties may agree and attach `hereto` as contract documents. I note that in the Appendix to the articles and conditions, there is a note against art 6(f) to the effect that the contract documents include `letters and documents as agreed between the employer and the contractor`. There is no evidence as to whether these include the letter of award. I cannot assume that they do not. I would be surprised if they do not. The letter of award by any reckoning is an important contract document between an employer and contractor, and it would be surprising if it were otherwise.

52 If that is a right view, it would then seem that the entries against cl 24 and cl 25 in the Appendix to the articles and conditions are mistakes; they were not intended to, and they do not, supersede the provisions of the letter of award in respect of the phased completion and the provisions of two sets of liquidated

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damages. There may be a case for rectification. I think that the plaintiffs` contention on this point cannot be sustained.

53 In respect of the purported delay certificate in respect of the sub-station, plaintiff counsel makes the point that in accordance with cl 24(1), the delay certificate should have been issued soon after the stipulated completion date of 26 January 1997. Clause 24(1) provides as follows:

> *As soon as the latest Date for Completion of the Works pursuant to cl 22 of the Conditions has passed, then if at the said date there are no other matters entitling the Contractor to an extension of time and the Works nevertheless remain incomplete, the Architect shall issue a certificate setting out the Contract Completion Date (if necessary modified or re-calculated under cl 10(1) of these Conditions); the total period of extension of time (if any); the consequential extended Contract Completion Date (if any); and certifying that the Contractor is in default in not having completed the Works by the stated Completion Date or Extended Completion Date (as the case may be). Such certificate shall be issued to the Employer with a copy to the Contractor, and is hereinafter called a `Delay Certificate`.*

54 Instead, the purported delay certificate was not issued until 13 October 1998, more than one year and ten months later. Counsel submits that it is invalid for that reason.

55 I accept counsel`s submission. The long delay in the purported issue of the delay certificate in respect of the sub-station clearly calls for an explanation. It has not been forthcoming. It must be assumed and taken to be invalid.

56 Counsel also criticises the extension of 52 days purportedly granted in respect of the main building. He says that the architect should have dealt with each delaying factor separately rather than lumping all of them together and giving one block extension like this. I agree with this criticism. It seems to me that cll 23(2) and 23(3) do contemplate that each delay factor should be dealt

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with individually. It is also good discipline that that is done. It adds to confidence in the decision of the architect under these clauses and facilitates examination of the certificates in the event of any arbitration over them.

57 ***Conclusion***

58 In the result, I find and hold that the purported extension of time and delay certificates issued by the architect are invalid. I therefore dismiss the appeal, with costs.

59 **Outcome:**

60 Appeal dismissed.

Warren Khoo L H J

Christopher Chuah and Lee Chau Ee (Drew & Napier) for the plaintiffs
Giam Chin Toon and Peter Chow (Wee Swee Teow & Co) for the defendants

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