IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 77

Suit 712/1997

Between

Galistan Gerard Clive Martin
trading as Rick's Technical
Services

… *Plaintiff*

And

L & M Prestressing Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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Galistan Gerard Clive Martin trading as Rick's Technical Services v L & M Prestressing Pte Ltd

[1999] SGHC 77

Suit 712/1997
Lim Teong Qwee JC
31 March 1999

Judgment :

1. The plaintiff's claim is for $649,464 for cost of materials supplied and services rendered. There are broadly three groups of claims. The first is for $233,929 for balance of the lump sum price for works ("upgrading works") under a contract contained in the defendant's letter dated 20 August 1996 and the plaintiff's letter dated 22 August 1996. The second is for $134,000 for balance of price for the supply of an Abus crane. The third is for $281,535 for various items of work done and materials supplied at the defendant's request.

2. The defendant admits the contract for the upgrading works contained in the two letters but alleges that the contract is subject to its standard conditions of sub-contract referred to in item 2 of its letter of 20 August 1996 although nothing turns on these conditions. The defendant admits the execution of the works and the balance due as claimed (save for $24,000) but alleges delay in completion for which it counterclaims damages exceeding the total of the sums admitted to be due and claimed in this action. The defendant admits the supply of the Abus crane and the sum due as claimed but alleges delay in delivery for

which it seeks to set off $121,800 for agreed damages. The defendant also admits the execution of the work and the supply of materials in the third group of claims. Of the sums claimed in this group it admits $187,119 to be due. It also admits payment of $24,000 which the plaintiff has credited to this group of claims but alleges that the payment was for the upgrading works under the contract contained in the two letters. Nothing turns on this. Separate defences are raised in respect of the sums not admitted.

3. At the conclusion of the trial I allowed the plaintiff's claim for $649,384 with costs and with interest at 6% pa from the date of the writ in this action except in respect of two retention sums included in the claim. I allowed interest at the same rate on these two sums from the date the statement of claim was amended to include them. The difference between the sum claimed and the sum for which judgment was given arose from an error in the arithmetic in one of the invoices. I dismissed the counterclaim with costs. The defendant has given notice of appeal and these are my written grounds of judgment.

Upgrading works

4. The claim includes $63,161 which Mr Chong in his closing submissions said was for the retention sum which was not due until 9 June 1997. Clause 7.1 of the terms of the contract provides for payment of the final 10% of the price "after expiry of six-month warranty [period]". It is not disputed that the warranty period had not expired at the date of commencement of these proceedings and that the period only expired on 8 June 1997. Mr Chong said that the claim for the retention sum was not included in the statement of claim that was endorsed on the writ when it was issued on 10 April 1997 but was included by an amendment made on 2 June 1998. He submitted that the claim was bad in law.

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He referred to *Eshelby v Federated European Bank Ltd* [1932] 1 KB 254. I should say that at the commencement of his speech closing the defendant's case Mr Chong tendered an agreed account of the plaintiff's claim and the retention sum printed as a disputed item was removed and entered as a conceded item. However the objection to this claim involves a point of some importance and I have thought it right that I should deal with it.

5. The record of the proceedings shows that leave was granted on 1 June 1998 for the statement of claim to be amended to include the retention sum and the statement of claim was duly amended. The relevant amendment appears in para 31. Leave was also granted to the defendant to amend its defence. The only statement in the defence relevant to the claim to the retention sum is in para 38. At the close of Ms Halijah's opening statement Mr Chong accepted my invitation to open the defence as pleaded and he gave notice of an application to amend the defence. I heard the appplication on the second day of the trial and granted leave to amend. Paragraph 38 of the defence was pleaded pursuant to such leave.

6. Mr Chong referred to Note 20/8/2 of the *Supreme Court Practice* (1999) which has this statement:

> "An amendment duly made, with or without leave, takes effect, not from the date when the amendment is made, but from the date of the original document which it amends ….
>
> The rule as to the effect of an amendment is the reason why a plaintiff may not amend his writ by adding a cause of action which has accrued to him since the issue of the writ (see *Eshelby v Federated European Bank Ltd* …."

In the *Eshelby* case Swift J said at pp 262, 263:

> "The Court has amended the statement of claim which is endorsed upon the writ, but it has not amended the writ itself;

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> and, indeed, it could not have done so, because in order to make this action on the second instalment one which would come within the writ, the date of the writ would have had to be altered from November 27, 1930, upon which it was issued and soon after which it was served, up to some date after January 15, 1931. I do not think the Court could possibly alter the writ in that way. It could not make an amendment to say that the writ had not been issued until some date after January 15, 1931. It seems to me, therefore, that this amendment never ought to have been made ...."

The statement of claim in this action is also endorsed on the writ.

7. In the *Eshelby* case the plaintiff issued his writ claiming payment of one instalment of money due under a contract. The defendant defaulted in paying a further instalment after issue of the writ. The plaintiff applied for leave to amend the statement of claim to claim the second instalment and it was held that he could not do so. Swift J referred to *Tottenham Local Board of Health v Lea Conservancy Board* (1886) 2 TLR 410 where Bowen LJ said that it was not necessary to decide the point but he had a very strong opinion that an amendment could not be allowed as it related to a cause of action which did not exist at the time when the writ was issued. Swift J also referred to *Creed v Creed* [1913] 1 IR 48 which appeared to him to decide that such an amendment could not be made but in that case the action was commenced by the plaintiff as administrator of the estate of the deceased and upon discovering that the deceased had left a will he applied for and was granted letters of administration with the will annexed. He then applied to amend but of course the original grant was *void ab initio* and the action itself was bad. With respect I do not think that case is authority for the proposition that an amendment of a statement of claim in an action that has been properly commenced cannot be made to plead a cause of action arising subsequent to the issue of the writ.

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8. In *Ketteman & Ors v Hansel Properties Ltd & Ors* [1987] AC 189 Lord Keith of Kinkel said at pp 199, 200:

> "It has long been a rule of practice that amendment should not be allowed for the joinder of an additional defendant in a situation where a relevant period of limitation has already expired in relation to the cause of action against him. The reason for that rule of practice is, however, debatable. One theory is that an additional defendant, joined unconditionally, becomes a party to the action as from the date of issue of the writ against the original defendant, that is to say, that joinder is related back to that date. That being so, it would be unjust to join him as a defendant at a time when limitation has run in his favour, because to do so would have the effect of depriving him of a valid defence. This theory has the support of a long line of authority in the Court of Appeal, which was examined by Stephenson and Brandon LJJ in *Liff v Peasley* [1980] 1 WLR 781. In that case the correctness of the theory was challenged by the citation of an old case in this House, *Byron v Cooper* (1844) 11 Cl & Fin 556. Brandon LJ expressed the opinion, obiter, that the relation back theory was incorrect. He considered the true basis of the rule of practice to be that no useful purpose would be served by joining an additional defendant at a time when limitation had run in his favour, because he was not to be deemed to have become a party at any earlier date than the actual date of joinder, and therefore would have an unanswerable defence."

and at p 201:

> "... I find myself in respectful agreement with the provisional view expressed by Brandon LJ in *Liff v Peasley* [1980] 1 WLR 781, 804, that the 'no useful purpose' theory, and not the 'relation back' theory, is the true basis of rule of practice to which I have referred."

All the other Law Lords agreed with him.

9. In *Vax Appliances Ltd v Hoover Plc* [1990] RPC 656 the question was whether a counterclaim could be amended to plead a cause of action which did not exist when the counterclaim was made. Mummery J considered the authorities including the *Eshelby* case and said at p 661:

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> "Having considered the authorities which have been carefully analysed in argument before me, and the relevant rules, I have come to the conclusion that the court does have jurisdiction to grant leave to reamend the counterclaim even though the counterclaim as reamended will rely on a cause of action which did not exist at the date when the counterclaim was first made."

The relevant rules referred to are the equivalent of O 20 r 5 and O 18 r 9.

10. O 20 r 5(1) provides:

> "... the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct."

Nothing in O 20 or in any of the rules provides that an amendment of the writ or pleading takes effect from the date of the original writ or pleading or that an amendment cannot be made to plead matters which have happened subsequent to the filing of the original pleading. As was observed by Dillon LJ in *Tilcon Ltd v Land and Real Estate Investments Ltd* [1987] 1 All ER 615 at p 619:

> "It is clear that there are many circumstances in which matters which would ordinarily fall to be pleaded and have happened since the pleading was originally delivered may fall to be put before the court at the trial and may even be dealt with by way of amendment of the pleadings. One obvious example is in the matter of special damages in an action for damages for personal injuries."

If there is any "relation back" then it is clear that in some cases at least an amendment to a pleading may be allowed to plead matters subsequent to the date of the original pleading.

11. O 18 r 9 provides:

> "Subject to Rules 7(1), 10 and 15(2), a party may in any pleading plead any matter which has arisen at any time, whether before or since the issue of the writ."

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Rules 7(1) and 10 provide for matters which are not relevant for the present purpose. R 15(2) provides:

> "A statement of claim must not contain any allegation or claim in respect of a cause of action unless that cause of action is mentioned in the writ or arises from facts which are the same as, or include or form part of, facts giving rise to a cause of action so mentioned; but, subject to that, a plaintiff may in his statement of claim alter, modify or extend any claim made by him in the endorsement of the writ without amending the endorsement."

This rule only applies where the statement of claim is not endorsed on the writ. It obviously does not apply to the present case.

12. Since the *Eshelby* case was decided amendments to plead matters which have arisen subsequent to the issue of the writ may now be made under O 18 r 9. The *Ketteman* case has rejected the "relation back" theory as the true basis for the rule of practice that an amendment should not be allowed for the joinder of an additional defendant after the expiry of the period of limitation. A defendant who has been added only becomes a party to the action when the writ has been amended in relation to him and has been served on him. See O 15 r 8(4). He does not become a party at the date of issue of the original writ. The amendment does not take effect from the date of the original document which it amends. In the *Ketteman* case Lord Griffiths said at p 220:

> "Whether an amendment should be granted is a matter for the discretion of the trial judge and he should be guided in the exercise of the discretion by *his assessment of where justice lies* (emphasis added)."

This is in accord with the language of O 20 r 5(1) and with respect I am entirely in agreement with it. It seems to me that the "rule" in the *Eshelby* case is inconsistent with these developments and I think it is no longer valid.

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13. Mr Chong has not suggested that the amendment to include the retention sum should not have been allowed on any other grounds and having regard to the circumstances I have referred to I am of the view that the amendment has been properly made and the claim to the retention sum has been properly included.

14. I come now to the claim for the balance of the price. Until about the time when this action was commenced the plaintiff carried on the business of providing crane services. Some time in July 1995 he was invited by the defendant to consider proposals for certain works to upgrade a Demag gantry crane. The defendant was then carrying out certain design and construction works in relation to the proposed undersea cable tunnel at Tuas as a sub-contractor of Obayashi Corporation which was the main contractor. The defendant's works included fabrication of concrete segments of the tunnel and transporting the segments from the fabrication yard or store to the place of installation. Each segment was 4.425 m wide and weighed about 230 tons. The segments were fabricated in moulds at the site. A crane was required to lift and transport the segments and the existing Demag crane had to be upgraded to meet the requirements.

15. Over the next 12 months or so from July 1995 the plaintiff met with representatives of the defendant and as requested he submitted a series of quotations. The quotations were discussed and revised from time to time until 1 July 1996 when the plaintiff submitted two quotations both dated 29 June 1996. This was the date of four earlier quotations which had been revised. The first of the two latest quotations was for 14 items of upgrading works for $316,920 and the second was for six items of additional works for $32,250.

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16. The Demag gantry crane to be upgraded was an overhead travelling crane mounted on a gantry. When installed the gantry would be mounted on the rails of a runway with two numbers of two-wheel buggies under each of the two supports or legs of the gantry. The overhead crane could travel across the line of the runway or "cross travel" and the gantry could travel along the runway or "long travel". The span or distance between the supports required the rails to be of 32.03 m gauge. There would be a clearance of about 11.43 m from the level of the rails to the girder which was to carry the rail for the overhead travelling crane. The rails of the runway were to be laid over a concrete floor at the site over a length of about 200 m on land from west to east and to continue on a jetty over the water for another 150 m approximately. This arrangement would provide a working area of about 30 m north to south between the rails and about 200 m west to east before the jetty. The gantry would be able to move in an east-west direction and the overhead crane in a north-south direction. On 1 July 1996 when the plaintiff's quotation was submitted the gantry crane to be upgraded was not at the site. There was a concrete floor at the site but the rails were not in place. The moulds for fabricating the concrete segments were in place in the area between where the rails would be and the defendant also had some quantity of its materials in the working area.

17. On or about 3 July 1996 the defendant informed the plaintiff that the gantry crane was at the defendant's yard at Jln Lam Sam which is several kilometres away from the Tuas site. The plaintiff and his supervisor attended at the Jln Lam Sam yard. They found two Demag gantry cranes which had been dismantled and the parts and components had been mixed up with some other equipment. The plaintiff was engaged to transport the parts and components of the two gantry cranes and also the steel for the rails to the Tuas site. The defendant now required both gantry cranes to be upgraded. The defendant also required the rails

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to be laid by the plaintiff. This was something new. At this point of time what the plaintiff had done was to quote for upgrading works in respect of one gantry crane but the quotation had not been accepted yet. The duration of the works was ten weeks. Nothing had been said about laying the rails.

18. The plaintiff said in his affidavit:

> "Initially I refused to upgrade two cranes. I told [Mr Vincent Chin] that was I only financially prepared to take on the responsibility of upgrading one Demag crane. At this time, Mr Vincent Chin had also requested us to do the installation work for the runway on which the Demag crane was to move. I pointed out to him that if I have to upgrade two cranes (and not just one crane), my workload would be doubled. I therefore declined to do the installation of the runway. He then suggested that I engage a contractor to provide the labour needed to install the runway and he said that defendant would pay the labourers (on a daily rated basis).
>
> It was agreed that their (defendant's) supervisor would oversee the installation of the runway and the alignment would be provided by defendant. My job was strictly confined to providing the workmen (ie labour), nothing else. I would purchase the consumables (ie bolts, nuts, rail clamps, joint plates, gas, oxygen, welding rods, rental of welding machines) and then bill them to defendant. Defendant would pay me for these items. I therefore agreed to do the installation of the runway on these conditions. I then requested my subcontractor one Mr Alvin Tan (Guan Yeow Mechanical Engineering) to provide the necessary workmen to install the runway."

19. Mr Chin was one of the defendant's representatives and he did not give any evidence. The agreed documents in relation to the construction of the rails are consistent with the plaintiff's evidence. I accept the plaintiff's evidence and in particular I find that in respect of the rails the "(defendant's) supervisor would oversee the installation of the runway and the alignment would be provided by defendant". I will refer to this again later but for now I return to the upgrading works. It was about mid-July 1996 now but there was still no formal contract for the upgrading works.

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20. On 24 July 1996 the defendant paid $126,768 to account of the works. This was 40% of the price quoted for upgrading one gantry crane or 20% in respect of two. The quotation of 29 June 1996 required payment of 20% by 24 July 1996. Arrangements were made to transport the two gantry cranes from Jln Lam Sam to Tuas but access to the Jln Lam Sam site was prevented by a crane which had broken down. The crane had nothing to do with the plaintiff. In the event the two gantry cranes were delivered to the Tuas site on or about 7 and 8 August 1996. The parts and components of the two Demag gantry cranes other than those to be fabricated or supplied by the plaintiff or third parties were at the site by 8 August 1996. There was still no formal contract for the works.

21. On 20 August 1996 the defendant wrote to the plaintiff. The letter is headed:

> "DESIGN AND CONSTRUCTION OF UNDERSEA CABLE TUNNEL AT TUAS - SUB-CONTRACT FOR UPGRADING OF 280 TONNE DEMAG CRANE (TO LIFT 230 TON AT ANY 10 METER INTERVAL)"

and it says:

> "We are pleased to award the above-mentioned Sub-Contract subject to the following terms and conditions:-"

12 paragraphs of the terms and conditions then follow and these are the relevant paragraphs:

> "2.1 You shall abide by our standard conditions of Sub-Contract and any other conditions as per the Main Contract that are deemed relevant to you shall be on a back-to-back basis. Copies of the aforementioned documents are available in our office for your perusal and you shall be deemed to have full knowledge of the same."
>
> "3.1 Your scope of Works shall include, but not limited to the following:-"

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> This is followed by 14 items of work as set out in the quotation except that they were modified as necessary for two gantry cranes.
>
> "6.1 The Sub-Contractor shall regularly and diligently proceed with and complete the upgrading of 280 Tonne Demag Crane on or before the completion period or date (10 weeks duration) …."
>
> "9.1 The Sub-Contractor shall indemnify the Contractor against any claims, damages, losses or expenses arising from any negligence or breach of duty or non-observance or non-performance including that of his servants or agents."

"Sub-Contractor" and "Contractor" are references to the plaintiff and the defendant and "Main Contract" is a reference to the defendant's contract with Obayashi Corporation.

22. The plaintiff said in his affidavit:

> "I had asked for copies [of the defendant's standard conditions of sub-contract] but was told it would be given to me later. As at 20.8.96, I had not sighted the standard conditions of the sub-contract.
>
> Mr Martin Tan explained that as the scope of work was spelt out in the letter of award, the sub-contract conditions did not apply."

He also objected to another clause in the defendant's letter of 20 August 1996. This clause would arguably have enlarged the scope of his work well beyond what he had quoted for and the defendant agreed to delete it by overstamping it with the word "Cancelled".

23. In his letter of 22 August 1996 the plaintiff confirmed the cancellation of the clause and also dealt with load testing, completion date and payment terms. He did not make any reference to the defendant's standard conditions of sub-contract. Under cross-examination the plaintiff said:

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> "Q: No reference to standard conditions. Why?
>
> A: Already consulted Martin Tan before writing this. Martin Tan said letter of award clearly spelt out my work scope and as such not given standard conditions."

Mr Tan was also one of the defendant's representatives and he also did not give any evidence. I accept the plaintiff's evidence and I find that it was agreed that the defendant's standard conditions of sub-contract would not apply and if it is necessary then I would rectify the contract by deleting references to these standard conditions. Is it necessary? Apart from para 3 of the defence where the defendant alleges that the contract for the upgrading works "comprises and/or is evidenced by" the defendant's letter of 20 August 1996, the plaintiff's letter of 22 August 1996 and the standard conditions nowhere else in the defence does the defendant refer to these standard conditions or any of their provisions. The plaintiff has not asked for rectification and in any event it is unnecessary as nothing in the defendant's case as pleaded turns on any of these standard conditions or their provisions.

24. In his letter of 22 August 1996 the plaintiff took the commencement date of the works to be 19 August 1996 and asked for the defendant's agreement to 28 October 1996 as the completion date. This was among other things agreed to and Mr Chin signed and returned a copy of the plaintiff's letter on 23 August 1996.

25. In his closing submissions Mr Chong conceded that time for completion was at large by reason of additional works to modify the bottom blocks. He said that the plaintiff was not required to complete the works on 28 October 1996 but within a reasonable time. He said that such reasonable time expired on 25 November 1996. The works were in fact completed on 9 December 1996 so that

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there was a delay on counsel's reckoning of 15 days. I make it 14 but nothing really turns on this.

26. The first thing to observe about the defendant's case based on the expiry of reasonable time is that it is entirely new and is not pleaded in its defence. Paragraph 5 alleges that the plaintiff is in breach of his obligations under the contract. Paragraph (1) of the particulars refers to para 6.1 of the terms and conditions in the defendant's letter of 20 August 1996. That term provides for completion in ten weeks which as subsequently agreed expired on 28 October 1996. Paragrah (2) alleges breach of these terms resulting in delay. Paragraph (3) alleges "numerous breakdowns of the crane" which contributed to further delay without any particulars of the breakdowns or of which of the two cranes. Paragraphs (4) and (5) allege the defendant's loss by reason of the delays pleaded in paras (2) and (3). Paragraph (6) refers to para 9.1 of the terms and conditions providing for an indemnity. It is not any part of the defendant's case as pleaded that the plaintiff had a duty to complete within a reasonable time and that he was in breach of this duty. It only remains for me to consider whether it was properly conceded that time was at large.

27. Each gantry crane had a lifting tackle at each end of a beam arrangement or "crab" which travelled on the top of the gantry. Each lifting tackle had two pulley blocks for two sets of hoist cables one on each side of the overhead beam of the gantry. The pulley blocks were separated by a box beam of quite substantial construction. Below the box beam there were three sets of hooking devices one in the middle and two at or near the two ends. Each hooking device consisted of a large bolt fitted through eyes in a pair of lugs built into the beam. The box beam is what is referred to as the bottom block. There were two bottom

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blocks for each gantry crane. It was not part of the scope of works under the contract for upgrading works for the plaintiff to modify the bottom block.

28. On 16 September 1996 while the works were in progress the defendant requested the plaintiff to modify all the four bottom blocks. The plaintiff said in his affidavit:

> "[Mr B C Lim] told me that defendant wanted the bottom blocks to be extended because defendant had discovered that the bottom blocks were too short to be able to lift their concrete segment. I told him to give me something in writing on this and to give me the details. I also pointed out to him that if I were to do works on extension of the bottom blocks, the completion date for the upgrading of the two Demag Cranes have to be extended. I would not be in a position to hand over the Demag Cranes by early November '96. He agreed as he said that the length of the bottom block MUST be extended to enable the defendant to perform their works relating to the tunnel."

Under cross-examination the plaintiff said:

> "Q: Galistan (1). Para 65. Sentence 4. B C Lim told you new date for completion?
>
> A: No.
>
> Q: You stated how long you needed?
>
> A: Indicated needed 10 days to do such block.
>
> Q: To do all 4. How much time?
>
> A: 40 days."

Of course all four could be modified in ten days with four teams of workmen but the price would be different. The plaintiff gave a written quotation which stated that the total time required was 40 days. The quotation was accepted when the defendant instructed the plaintiff to proceed with the works without any qualification as to the duration.

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29. The drawings for the modification were ready by 7 October 1996 so that the plaintiff was able to give the quotation on 8 October 1996 but the exact positions of the lifting lugs and hence where the eyes would be in relation to the bottom block were not shown and had yet to be advised by the defendant. Work could not proceed without these as the box beam had to be strengthened at these positions and the strengthening plates had to be welded inside. It was as well that work had not proceeded because on 10 October 1996 the defendant supplied drawings with the positions of the eyes of the lugs shown and these drawings did not agree with those on which the quotation had been given. In the event the plaintiff agreed to execute the works according to the defendant's drawings. The bottom blocks were to be extended from the existing length of 3.72 m to 5.42 m with the eyes at 4.5 m measured from the mid-point of the bolts. The instruction to proceed was given on 16 October 1996. Allowing 40 days for the works the bottom blocks should be ready over a period of time ending on 25 November 1996.

30. On the evidence before me there can be no doubt that during the execution of the upgrading works and well before the contractual completion date additional works were ordered by the defendant by way of the modification of the bottom blocks. The contractual time for the modification works would only expire on 25 November 1996 and until such works had been completed the gantry cranes could not be installed and load tested. In the circumstances it was quite properly conceded by counsel that time for completion of the upgrading works was at large. This is sufficient to dispose of the defence and counterclaim as pleaded.

31. In fact the upgrading works including the modification of the bottom blocks were practically completed on 6 November 1996 in respect of one gantry crane

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identified for convenience as "C1" and on 12 November 1996 in respect of the other identified as "C2". The only outstanding work was to provide a professional engineer and technicians to do load testing of the gantry cranes. Notwithstanding that the cranes had not been load tested the defendant requested delivery and on those dates the gantry cranes were delivered. Written acknowledgments of handing over are among the agreed documents.

32. The contract provides that the defendant was to "provide loads ie 253 tons steel weights or water bags to hold 253 tons of water subjected to the approval of PE. [Defendant's] segment plus 10% of steel weights for load test". The gantry cranes were to be used to lift 230 tons. That was the weight of each of the concrete segments. A 10% margin was required for the load test. The cranes had to be tested to lift 253-ton loads. It was the defendant's obligation to provide the loads required for the tests.

33. On 25 October 1996 the plaintiff wrote to the professional engineer for load testing of the two gantry cranes. 5 November 1996 was proposed for carrying out the tests. On 2 November 1996 the professional engineer wrote back to confirm that he would attend on 5 November 1996. The plaintiff said in his affidavit:

> "In accordance with plan, on 5th November 1996, at about 3:00 pm, Mr Ronnie Lua (PE from MOL) visited the work site to conduct the load test on C1 Crane. But there was no loads to do the load testing. As a substitute, Mr Lua was agreeable to use the concrete segment that defendant had constructed plus 10% steel loads as the weights to do the load testing. But unfortunately, the exact weight of the concrete segment could not be verified. As a result, the load test was postponed to a later date (25.11.96).
>
> As steel weights are expensive, Mr B C Lim, in a cost cutting measure, instructed us to do the load test for both C1 & C2

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> cranes on the same day so that we need only rent the steel weights on one occasion."

Under cross-examination he said:

> "Q: Galistan (1). Para 96. Load testing. You expected defendant to provide test load for load test?
>
> A: 25/10/96. Sent fax to professional engineer to arrange load test with copy to defendant. In our letter 22/8/96 load to be provided by defendant. 1AB-24. Expected defendant to provide loads for test.
>
> Q: How you expect defendant to obtain test load when informed defendant only on 5/11/96?
>
> A: Always my understanding defendant wanted to use their segments as loads for load test. Segments were concrete segments for tunnel.
>
> Q: Defendant told you?
>
> A: Yes.
>
> Q: Who?
>
> A: B C Lim and B C Foo."

Neither Mr B C Lim who had taken over from Mr Chin nor Mr Foo gave evidence. It will be recalled that the contractual time for completion of the modification works to the four bottom blocks would only expire after 25 November 1996 and load testing on 25 November 1996 would still have been within the reasonable time for completion of the upgrading works.

34. On 23 November 1996 the defendant requested from the plaintiff the method statement for the load test. The request was made by letter written by Mr Ooi who had only just been assigned by the defendant to take charge of the Tuas project succeeding Mr B C Lim. It was an unjustifiably offensive letter and the explanation can only be that he was unaware of the circumstances. The plaintiff provided the method statement. This was prepared by Water Weights (SEA) Pte

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Ltd who also quoted for the supply of the test loads. It was the plaintiff who had arranged this at the defendant's request although under the contract the defendant had to provide the test loads.

35. Load testing could not be done on 25 November 1996 as planned. Both the C1 and C2 cranes were on the rails with the C1 crane to the east ie nearer the jetty. The C1 crane was used by the defendant and on 18 November 1996 one set of its wheels broke. The plaintiff was instructed to remove a set of wheels from the C2 crane and fix it on the C1 crane so that it could continue to be used. He quoted for this and also for supplying and installing a set of wheels for the C2 crane. Load testing was postponed to 2 and 3 December 1996 and all parties were duly informed. On 29 November 1996 Water Weights (SEA) advised that owing to congestion at its yard the loads for the tests could not be moved and with the concurrence of the defendant load tests were rescheduled for 5 and 6 December 1996.

36. On 6 December 1996 the C2 crane was successfully load tested. The C1 crane was also successfully load tested on 5 December 1996 but since it also had to be used on the jetty it had to be tested there as well. This could not be done until 8 December 1996 when the defendant had produced the drawings of the jetty which it had obtained from Obayashi Corporation. Load testing on the jetty also required a level check on the jetty to be made the following day and it was only on 9 December 1996 that load testing certificates were issued.

37. Having regard to these circumstances which were not disputed there was no question about any delay on the plaintiff's part even if the defence as pleaded could be construed as extending to relying on failure to complete within a reasonable time. In my judgment time for completion of the upgrading works

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was at large and the plaintiff did complete the works within a reasonable time. The plaintiff is entitled to judgment as claimed and on the counterclaim for an indemnity for loss occasioned by his delay he is entitled to judgment dismissing it.

Abus crane

38. In the course of the execution of the upgrading works the plaintiff agreed at the request of the defendant to supply and install one Abus gantry crane. The contract is evidenced by:

(a) the plaintiff's letter dated 29 May 1996 ("quotation");

(b) the defendant's letter dated 31 July 1996;

(c) the plaintiff's letter dated 3 October 1996;

(d) the defendant's purchase order dated 3 August 1996 ("purchase order"); and

(e) the plaintiff's letter dated 21 October 1996.

The purchase order although dated 3 August 1996 was only received by the plaintiff on 21 October 1996 and after he had spoken to the defendant's Mr Lau he wrote the letter dated 21 October 1996. The Abus crane was to be mounted on the rails of the runway in the order of Abus crane, C2 crane and C1 crane from west to east.

39. It was not disputed that the Abus crane was to be delivered within ten weeks. The purchase order stated that the ten weeks began on 3 August 1996 and ended on 15 October 1996 but the purchase order was only received on 21 October

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1996. Earlier the plaintiff had confirmed the defendant's order. This is evidenced by the plaintiff's letter of 3 October 1996. The letter referred to the quotation and stated that the order was dated 3 September 1996 when a down payment was made. It concluded with a reminder that a purchase order had not been issued. Ten weeks from 3 September 1996 would end on 12 November 1996. On receipt of the purchase order the plaintiff spoke to Mr Lau. He said in his affidavit:

> "I pointed out that I had just received the PO and the down payment was received on 3.9.96. He advised me to write in on the matter. I did [by letter dated 21 October 1996] indicating that the delivery of the Abus Crane was to be on 12.11.96 and not 15.10.96."

Mr Lau did not give evidence and I see no reason not to accept the plaintiff's evidence. I find that the delivery date was agreed to be 12 November 1996.

40. The plaintiff contracted with Cimmerian Crane Services Pte Ltd ("Cimmerian") for the supply and installation of the Abus crane and on or about 8 November 1996 the parts and components of the crane were delivered to the site. They had to be installed on the rails of the runway. The plaintiff said in his affidavit:

> "As Mr B C Lim was not around, we then wrote to Mr Y C Lau / Mr B C Lim confirming delivery of Abus crane. I annex as exhibit '53' copy of letter dated 9.11.96. Please refer to Cimmerian's letter dated 8/11/96, copy of which is annexed hereto as exhibit '54'. We could not start installation as our access was being used by C2 Crane."

The plaintiff's letter dated 9 November 1996 confirmed delivery and lack of access for installation of the crane. Cimmerian's letter dated 8 November 1996 was to the same effect. There was no response to the plaintiff's letter.

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41. Under cross-examination the plaintiff said that the C2 crane could not move on its own power but could be towed. It could be towed about 10 m to the east "before interferring with other contractors". He went on to say:

> "Q: 10 m. Enough space to install Abus crane?
>
> A: 8/11/96. Girder of Abus crane was not on site. Could not commence installation. If on site from safety point of view could not install. Enough space to install but would be dangerous. Since can't use rebar cage area would have to use 2 cranes to lift girder of Abus crane and 3rd crane to carry basket for workers to install girder on legs. Would be too close to C2 crane. Any time girder hit C2 crane could topple girder or damage C2 crane. Abus girder approximately 30 tons.
>
> Q: Height of installation of girder of Abus crane?
>
> A: Remember to be around 11 to 12 m from ground. Tip of girder on final installation. Would have to be lifted another 1 or 2 m to place in position.
>
> Q: Discussed with defendant on possibility of moving some of contractors east to make more space available to you?
>
> A: No. No girder on site".

42. I find that the parts and components of the Abus crane other than the girder were delivered to the site on 8 November 1996. This was well within the delivery date. I further find that the plaintiff was prevented from installing the crane by the defendant owing to conditions at the site for which the defendant was responsible. The girder weighed about 30 tons and was about 32 m from end to end. That was the span of the gantry crane. I accept the plaintiff's evidence that it would have been dangerous to install the girder given the limited working space. It was even suggested in cross-examination that the two "legs" could be installed before the girder was ready to be installed. I think this is a preposterous suggestion and I accept the plaintiff's evidence that it would be dangerous. The plaintiff did not have the girder at the site but it was reasonable

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for him not to have delivered it until the defendant's site conditions enabled him to install the crane.

43. On 18 November 1996 Cimmerian delivered the girder to the site. I think by then it must have been thought likely that installation could begin but unfortunately that was the day when as noted above one set of the wheels of the C1 crane broke and one set of the C2 crane's wheels was removed and reinstalled in the C1 crane. The C2 crane could not be towed along the runway to make room for installation work to be carried out.

44. The plaintiff said in his affidavit that on or about 22 November 1996 Mr Ooi asked him to increase the height of the Abus gantry crane by one metre "as he wanted to be able to move the rebar cage one over another". Under cross-examination he said:

> "Q: Galistan (1). Para 114. Sentence 3. By 22/11/96 C2 crane was still blocking access?
>
> A: Wheel was being installed on that day.
>
> Q: Sentence 1. He asked you to do work or asked if it could be done?
>
> A: He made inquiry.
>
> Q: He asked you not to start installation of Abus crane?
>
> A: No."

Mr Ooi said in his affidavit that he only requested the plaintiff to check with the supplier of the Abus crane to see if it was possible to increase the height "because I was worried that there might not be enough head room for the crane".

45. The defendant does not dispute that on or about 22 November 1996 it requested the plaintiff to check with Cimmerian whether it was possible to increase the height. That was what Mr Ooi said. The defendant was concerned

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that there might not be sufficient head room. The "rebar cage" referred to by the plaintiff was the steel formwork which the defendant was fabricating in the first 35 m of the working area between the rails of the runway to the west. The Abus crane was required to move the completed rebar cage eastwards to the adjacent part of the working area where the moulds were for fabricating the concrete segments. It was undoubtedly a matter of no small concern and I think Mr Ooi would not only have asked whether the height could be increased but would have indicated the measure of the increase. The plaintff said it was to be increased by one metre. Mr Ooi in his evidence did not make any reference to this and I think he did ask the plaintiff to inquire of Cimmerian if the height could be increased by one metre.

46. It was suggested by Mr Ooi in his affidavit that the plaintiff could continue with the installation while waiting for an answer to its inquiry. I do not see how this can be a reasonable or sensible thing to do in the circumstances. The installation of the crane could well be completed before an answer was received and obviously the defendant’s inquiry was an expression of interest if not an intention to increase the height of the gantry if it could be done.

47. In his affidavit the plaintiff said that on 11 December 1996 he received a reply from Cimmerian about the increase in height. Cimmerian advised by its letter of 11 December 1996 that an increase in height was not feasible. Under cross-examination the plaintiff said:

> "Q: Galistan (1). Para 126. Sentence 1. You chased Cimmerian for answer before 11/12/96?
>
> A: Yes. Made few telephone calls.
>
> Q: Their answer?
>
> A: Design engineer was working on it."

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To increase the lifting height the gantry would have to be redesigned resulting in an increase in its weight. This in turn would adversely affect the performance of the wheels and the motors. This was substantially the reason given by Cimmerian.

48. The defendant was informed the same day by Cimmerian itself and the following day the plaintiff proceeded with the installation of the Abus crane without any change in the height. The reasonable inference is that the defendant decided against increasing the height and advised the plaintiff accordingly. The work was completed on 18 December 1996 and load testing was arranged for 23 December 1996.

49. On 20 December 1996 the C1 crane had an accident while lifting a concrete segment. The plaintiff said in his affidavit:

> "The lifting gear (lifting belt) that was used had snapped, causing the 'crab' unit to bounce onto the runway and breaking the anti-tilt device .... Defendant had used the lifting gear (fibre belts) that MOL had advised them not to use .... Because of the damages to C1 crane, Mr Ooi instructed that the load test booked for 23rd December 1996 for 2 x 10 ton Abus Gantry Crane had to be postponed to a later date. This was to avoid the PE from MOL from finding out about the accident with C1 crane. This was because the same PE, Mr Ronnie Lua, will again conduct the load test for the Abus crane."

This was not disputed. The load test was eventually carried out successfully on 5 January 1997 and the Abus gantry crane was handed over.

50. In the circumstances I am satisfied that delivery within the contractual period was prevented by the defendant. Delivery was postponed by agreement of the parties to 5 January 1997 when the crane was handed over after successfully completing load test. There was no delay in the supply and

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installation of the Abus gantry crane and the plaintiff is entitled to judgment for the balance of the price claimed and to have the counterclaim for damages for delay dismissed.

Cranage

51. On 1 July 1996 the plaintiff submitted two quotations in respect of the upgrading works. One was for 14 items of works. These 14 items have been incorporated in the defendant's letter of award of 20 August 1996. The other quotation was for six items of additional works. The first of these six items was for supply of cranage at $4,750 per crane. The second was for supply of power cables at $9,000 and the sixth was for supply of bolts, nuts and washers at $1,500 per crane. It is not disputed that these three items of works were duly executed for the two Demag cranes. The plaintiff's delivery order dated 30 December 1996 was acknowledged by the defendant's representative. Three separate invoices were issued for these items. All three invoices were also acknowledged by the defendant's representative.

52. The defendant admits liability for the second and the sixth items but denies liability for the first item. Its defence as pleaded is that "these works are within the original scope of works" of the contract for the upgrading works. I find that it was contemplated by the parties that additional cranage would be paid for and that the plaintiff is entitled to be paid $9,500 as claimed in his invoice dated 9 December 1996.

Installation of 5-ton monorail crane

53. At the defendant's request the plaintiff installed a 5-ton crane on one of the Demag cranes. He quoted $5,850. He completed the work and his delivery order

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and invoice were acknowledged by the defendant. The defendant denies liability. Its case is that the crane is part of the Demag crane and its installation was part of the contract for the upgrading works. The plaintiff said under cross-examination that its installation was a separate item because it was not sighted when he quoted for the upgrading works and when the defendant's letter of award was received. It was brought to the site on or about 28 August 1996.

54. The 5-ton crane was installed on only one of the two Demag cranes. The quotation and the letter of award made no distinction in the works to be carried out on the two Demag cranes. A separate quotation was given for the installation of the 5-ton crane. The plaintiff was instructed to proceed without any counter to the sum quoted. I shall refer to the defendant's letter of 16 October 1996 in relation to another claim later but for the present it is sufficient to note that the defendant was aware of a separate quotation for these works. The delivery order and the invoice were acknowledged. I find that the plaintiff is entitled to payment of $5,850 as claimed.

Modification of bottom blocks

55. The plaintiff quoted $49,200 for these works and it is not disputed that the works were completed. His delivery order was acknowledged by the defendant's representative. He issued two invoices for $43,000 and $5,900 and these were also acknowledged. In his claim he has allowed $24,000 for payment made to account and claims the balance. The defendant admits the work done but denies that the plaintiff is entitled to the sum claimed. Its case as pleaded is that "the price of $48,900 is unreasonable and a reasonable price for the work done is $5,152".

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56. The plaintiff said in his affidavit:

> "As at 16 October 1996, we had received no down payment for the works which were outside the scope of the LOA (ie extension of bottom block, 5 ton mono rail hoist, electrical panel servicing etc). We had already started cutting the bottom block. We had no choice but to stop these works and get instructions from B C Lim. At a meeting attended by Mr David Murray, the QS (as Mr Martin Tan was not available), and Mr B C Lim, it was agreed that we should proceed with the works and Mr B C Lim would give me a written approval for all the quotations I had submitted on 8.10.96. He also promised that he would proceed with the preparation to make payments to us. A letter from Mr B C Lim was received on the 16/10/06 .... In this letter, the defendant accepted our quotations for the above works ...."

57. Mr Murray is the defendant's contracts manager. He said in his affidavit that he was the senior quantity surveyor in charge of the Tuas project and was responsible for "assessing and valuating the variation claims made by the sub-contractors". Mr Murray is not a member of any professional body of quantity surveyors but he holds the higher national certificate in building studies. He said that a "reasonable value of the [modification] works" was $10,304. This was for two Demag cranes.

58. By its letter dated 16 October 1996 the defendant wrote:

> "You are to proceed immediately with the works as listed in your letters ref: Q/LM/GG/006/96 ... dated 08 October 1996. Any works which constitute variations to your subcontract will be valued in accordance with the terms and conditions of the subcontract."

Valuation of any works "in accordance with the terms and conditions of the subcontract" is wholly irrelevant. The only defence pleaded to the claim for the modification works is that the price of $48,900 is unreasonable. It is not any part of the pleaded case that the price is to be ascertained in accordance with any terms or conditions or in any particular way. It is also irrelevant what the

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"value" or "reasonable value" of the modification works is. The defendant may be attempting to rely on its standard conditions of sub-contract but I have found that the parties had agreed that these conditions would not apply to the contract for the upgrading works and there is no evidence that they were to form part of or were incorporated in any contract for any of the other works.

59. In its letter of 16 October 1996 the defendant referred to three other letters of the plaintiff dated 8 October 1996. These were the plaintiff's quotations for:

(a) the installation of the 5-ton crane which I have considered;

(b) three items of supply of labour and materials; and

(c) the servicing of electrical panels.

The plaintiff's claim in respect of one of the items of supply of labour and materials and the claim in respect of the electrical panels were admitted in full.

60. I think that to a reasonable person in the position of the plaintiff what the defendant was communicating by its letter of 16 October 1996 was that the defendant accepted the plaintiff's quotations subject to the qualification that where the works constituted variations to the contract for the upgrading works then such works would be valued or priced according to the terms of the contract. If the works were not variations then they would be priced according to the quotations. If they were variations but the terms of the contract gave no basis for valuing or pricing the works then again they would be priced according to the quotations. Counsel has not suggested that what the defendant said in its letter could have meant anything else.

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61. The upgrading works were left entire and intact down to the defendant's letter of 16 October 1996. Every part of these works was intended to be executed and every such part was intended to be executed according to the contract for the upgrading works. No part was to be omitted. No part was to be varied. In my opinion it would be a misuse of language to include any part of the modification works as variations or as variations of the works under the contract for the upgrading works. They were outside the scope of the upgrading works. They were not variations within the meaning of that word as used in the defendant's letter of 16 October 1996. If they were then the defendant might have said "These works constitute variations ...." and not "Any works which constitute variations ...." Even if the modification works were variations the defendant's case as pleaded makes no reference to any provision of the contract for pricing these works or to the price ascertained in accordance with those provisions. The plaintiff is entitled to payment of the balance of $24,900 as claimed.

Painting of two Demag gantry cranes

Supply of additional dual controls

62. The plaintiff claims $14,000 for painting each of the cranes and $5,000 for the supply of additional dual controls. He has executed the works and supplied the dual controls and the defendant admits this. The defendant also admits that it has to pay for this but what the defendant says in its defence is that "the price of $19,000 is unreasonable and ... that a reasonable price for the painting is $7,200 and for the dual control panel is $4,000".

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63. The plaintiff quoted for these two items of works and supply and also for two units of additional platforms in his quotation dated 8 October 1996. This is one of the quotations he referred to in his evidence which I have pointed to in regard to his claim for the modification of the bottom blocks. This is also one of the quotations referred to by the defendant in its letter of 16 October 1996. For the same reasons as in regard to that claim I am satisfied that the plaintiff is entitled to payment of $14,000 for painting and $5,000 for the dual controls.

Replacement of long travel wheels for crane C2

(18 November 1996)

Removal and replacement of long travel wheels for crane C1

(17 December 1996)

Supply of spare parts

(6 January 1997)

Removal and replacement of long travel wheels for crane C1

(6 March 1997)

64. On 18 November 1996 while the C1 crane was being used by the defendant one set of its wheels broke. I have referred to this in regard to the load tests to be carried out on the two Demag gantry cranes. As instructed by the defendant the plaintiff removed one set of wheels from the C2 crane to replace the broken wheels of the C1 crane. He also supplied and installed a new set of wheels for the C2 crane. He claims $9,380 for this. On 17 December 1996 another set of

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wheels of the C1 crane was found to have cracked and at the request of the defendant the plaintiff replaced this with parts supplied by the defendant. He claims $210 for this. On 6 January 1997 the plaintiff supplied the defendant spare parts for which he raised an invoice for $10,600. At the conclusion of the trial the defendant conceded $3,800 for some of the spares. On 6 March 1997 another set of wheels of the C1 crane broke in an accident and the plaintiff replaced these with wheels and bearings provided by the defendant. These were some of the spare parts he had supplied the defendant earlier. He claims $3,000 for this. The defendant admits the work done and materials supplied as alleged but in its defence it says that "the crooked and misaligned rail added stress to the wheels of the cranes (*sic*) thereby causing the wheels referred to in [the plaintiff's claim] to break".

65. Paragraphs 17 and 19 of the defence state:

> "17. On or about July 1996, the defendant requested the plaintiff to and the plaintiff agreed to provide labour, cranage, belts and nuts, joint plates and clamps to install 700 meters of runway for the two Demag cranes ('the Runway Contract'). It is an implied term of the Runway Contract that the plaintiff will carry out the service with reasonable care and skill.
>
> 19. In breach of the implied term of the Runway Contract, the plaintiff failed to carry out the services with reasonable care and skill.
>
> Particulars
>
> (1) The plaintiff welded the rail for the runway to the ground with no room in between the rails for expansion and contraction. As a result of this, the rails became crooked and misaligned after some time."

The defendant's case is that the plaintiff is liable to it for the cost of the replacement of the wheels as damages and it claims a set-off.

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66. I have referred to the plaintiff's evidence as to the terms of his engagement in regard to the laying of the rails for the runway. Part of his evidence is repeated here:

> "It was agreed that their (defendant's) supervisor would oversee the installation of the runway and the alignment would be provided by defendant. My job was strictly confined to providing the workmen (ie labour), nothing else. I would purchase the consumables (ie bolts, nuts, rail clamps, joint plates, gas, oxygen, welding rods, rental of welding machines) and then bill them to defendant. Defendant would pay me for these items."

I have accepted the plaintiff's evidence and in particular I have found that in respect of the rails the "(defendant's) supervisor would oversee the installation of the runway and the alignment would be provided by the defendant".

67. Mr Ooi said in his affidavit that:

> "[The defendant] also sub-contracted the building of the runway for the DEMAG cranes to RTS for sum of $100,000.00. The terms of the contract for the building of the crane runway are contained in RTS's revised quotation dated 7 October 1996, a copy of which is exhibited and marked as 'OCT-3'."

The quotation was for this item only:

> "To provide labour, cranage, bolts and nuts, joint plates and clamps to install 700 meter of runway for 'C' crane runway PRICE: S$100,000.00"

It went on to say:

> "This quotation does not include: 1. Runway 'I' beam and rails 2. Surveyor to provide alignment measurement"

68. Mr Ooi had no personal knowledge of the circumstances leading to that quotation. In any event it was a quotation for *providing labour and materials*. It was not a quotation for "building of the runway" for the Demag gantry cranes.

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The quotation is entirely consistent with the plaintiff's evidence that his "job was strictly confined to providing the workmen" and he also purchased the consumables. It is entirely consistent with his evidence that the defendant's supervisor would oversee the installation of the runway and the alignment would be provided by the defendant.

69. The contract was for the plaintiff to supply workmen. It was not a contract for him to "build the runway" or to lay the rails for the runway. He was not engaged to produce a result. The workmen found by him were under the supervision of the defendant. It was the defendant which could direct them as to what it wanted them to do. It was the defendant which was to provide the alignment. It was the defendant by its letter dated 23 July 1996 setting out the method statement which gave instructions for the rails to be laid on steel chairs tack welded to the starter bars. Precise instructions were given for seating the rails on the foundation but nothing was said about leaving any room for expansion and if so how much room.

70. Having regard to the express terms of the contract it would not be any part of the plaintiff's duties to determine whether or not to leave any "room in between the rails for expansion and contraction". That would be for the defendant to determine and to order the workmen to carry out as it determined. It would not be any part of the plaintiff's duties to provide the alignment. In so far as the implied term relates to the breach alleged it is plainly inconsistent with the express terms. In my judgment there was in the contract for the supply of labour and materials in respect of the runway no implied term as alleged and as particularised in its alleged breach in the defence.

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71. I find that the plaintiff is entitled to be paid $9,380, $210, $10,600 and $3,000 as claimed. The defendant is not entitled to the damages claimed and there will be no set-off.

Repair of lifting gear

72. On or about 20 December 1996 the C1 crane had an accident while it was being used by the defendant. I have referred to this in regard to the arrangements for load testing of the Abus crane and I have also pointed to the plaintiff's evidence in this respect. At the request of the defendant the plaintiff carried out the repairs for part of the damage. He submitted an invoice for $31,820. The defendant paid $20,000 and this left a balance of $11,820. The defendant admits all this but says in its defence that the price was unreasonable and that a reasonable price was $20,000 so that nothing else is due.

73. It is not disputed that the plaintiff gave a quotation at the defendant's request. The repairs had to be carried out urgently. The plaintiff said in his affidavit that he was told to carry out the repairs in four days. His assessment was two weeks and he told Mr Ooi who then asked for a quotation for only part of the repairs. That was the plaintiff's quotation for $31,820. The repairs were completed. The plaintiff's invoice was submitted on 31 December 1996. It was acknowledged by Mr Ooi who signed on it.

74. I think there was a contract for repairs at the agreed price of $31,820. A quotation was asked for and it was given. The works were ordered and they were carried out and the invoice was for the price quoted. It was acknowledged without any qualification. Part payment was made also without any qualification. Mr Murray called the repairs "variations" which they are not and

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he said a reasonable "valuation" of the repair works was $20,000 but this is irrelevant. The plaintiff is entitled to payment of the balance of $11,820.

Repair of two micro hoist motors

75. On 26 January 1997 the plaintiff submitted a quotation for the repair of two micro hoist motors for the C1 crane. They had been incorrectly wired and this had caused a short circuit. He proceeded to carry out the repairs and he submitted an invoice for $1,500. This is the price quoted in his quotation of 26 January 1997. The defendant admits that the plaintiff carried out the repairs but says in its defence that "the micro motors broke down on or about 26 January 1997 and were still under the six month warranty under clause 4.2 of the Letter of Award" and the plaintiff was obliged to carry out the repairs. In his reply the plaintiff says that the warranty was withdrawn after repair works were carried out by a third party following the accident on 20 December 1996.

76. Clause 4.2 of the terms of the contract for the upgrading works contained in the defendant's letter of 20 August 1996 provides:

> "The Sub-Contract Sum shall be deemed to include the following: (a) Six-month warranty of the cranes; …."

The contractual documents contain no other provision as to the "warranty". They say nothing as to what it is that the plaintiff warranted. The pleadings do not take the matter any further. The defence discloses no reasonable ground of defence to this claim but the plaintiff has not taken this objection and some evidence has been given by affidavit as well as under cross-examination and I should consider whether the evidence discloses any defence.

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77. The quotation dated 26 January 1997 was for removing, sending for rewinding and reinstalling one micro hoist motor for the C1 crane for $850 and for sending for rewinding one micro hoist motor and returning it to the Tuas site for $650. The second motor was obviously a spare and did not require removal or reinstallation. I have looked at all the quotations given by the plaintiff in respect of the upgrading works and it is at once clear that the contract did not require the plaintiff to do anything with regard to the micro hoist motors or to supply these. They were the property of the defendant.

78. From the photographs of the two Demag gantry cranes produced in evidence and the agreed documents it is clear that each gantry crane had four main hoist motors and one micro hoist motor in its hoisting mechanism. There were other motors to move the "crab" unit mounted on the top of the girder and to move the gantry mounted on the rails of the runway. All were electric motors. An electric motor typically consists of a fixed part which contains the stationary circuits and a rotating part. The fixed part is called the *stator* and the rotating part is called the *rotor*. Mr Ooi was either confused or did not know what he was saying when he identified one of the main hoist motors as a "stator motor" and also as a "creep speed motor" but he correctly identified the micro hoist motor. He also correctly stated that all the motors including the micro hoist motor had a stator when I asked him.

79. Following the accident to the C1 crane on 20 December 1996 repairs were carried out in part by the plaintiff and in part by Helmsion Engineering Pte Ltd ("Helmsion"). I have looked at the repair bills of both. It does not appear that either the plaintiff or Helmsion repaired the micro hoist motor but it was the plaintiff who brought the "crab" unit down and Helmsion that carried out reinstallation of the "crab" unit and the wire ropes. The plaintiff completed the

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execution of its repair works before Helmsion. Helmsion also carried out electrical works and commissioning of the crane on completion of all the repairs. The defendant not only had the crane repaired but it also purchased a stator for the "creep speed hoist motor" for the spare motor for the C1 and C2 cranes. The "creep speed hoist motor" is the micro hoist motor. Shortly after the two micro hoist motors had to be repaired by the plaintiff.

80. The two micro hoist motors were the property of the defendant and they were not supplied by the plaintiff. The C1 crane had been used by the defendant from about 6 November 1996 when it was handed over after completion of the upgrading works except for load tests. There was no complaint about its micro hoist motor. Shortly after the completion of the repairs following the accident on 20 December 1996 there was a fault in the wiring. The spare micro hoist motor with the stator supplied by Helmsion also had the same fault. Clearly if there was any warranty whether as to fitness for any purpose or quality or otherwise it did not extend to the two micro hoist motors. The claim is only for $1,500 but it has been contested and I find that the plaintiff is entitled to judgment for this.

Load test following accident

81. As a result of the accident involving the C1 crane on 20 December 1996 another load test was required. The professional engineer, a supervisor and a technician had to attend. The plaintiff gave a quotation for the attendance. In due course he raised an invoice for $2,800 which was the price quoted. In its defence the defendant admits liability but says that the price is unreasonable and that a reasonable price is $1,000.

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82. The plaintiff said in his affidavit that the defendant requested him to arrange for the load test to be done. For the load test he had to arrange for the professional engineer and others to attend. He gave a quotation which he said was accepted. He issued a delivery order and the invoice for the price quoted. Mr Ooi signed the delivery order and the invoice without any qualification. In these circumstances I find that the price was agreed and the plaintiff is entitled to payment as claimed.

Remedial works for runway

83. The plaintiff claims $32,160 for remedial works carried out to the rails laid. There are three items in the plaintiff's invoice for these works. The first two, for $7,360 and $14,720, relate to that part of the rails on the land side. The third, for $10,080 (incorrectly stated as $10,000) relates to that part on the jetty. In each case the rails had to be removed and relaid. The defendant says that it was an implied term of the contract in relation to the installation of the runway that the plaintiff would "carry out the services with reasonable care and skill" and that in breach of this term he "failed to ensure that the span measurement between the two rails [which had to be remedied] was 32.030 m". It alleges that the plaintiff is liable for the cost of the remedial works as damages and claims a set-off.

84. I have found that the alignment was to be provided by the defendant. What has to be determined is whether the workmen provided by the plaintiff laid the rails in accordance with the alignment that the defendant provided. At the trial the defendant conceded the claim relating to that part of the rails on the jetty. On the land side the rails were laid over a concrete floor. According to the method statement given by the defendant the I-beams were to be laid on steel

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chairs and the steel chairs were to be tack welded or tied to starter bars embedded in the concrete floor. The defendant said that this was agreed with Mr Oga of Obayashi. The starter bars would already have been in place before the plaintiff agreed to provide labour for the installation of the runway but in any case it was not any part of his duties to lay the concrete floor or to provide starter bars embedded in it.

85. Mr Tan Lye Soon was the project manager of Guan Yeow Mechanical Engineering who provided the skilled welders and workers. He said in his affidavit:

> "What I know was that Obayashi had provided us with the 'line' (span measurement of the crane) which served as a guide for my workmen to do the alignment of the runway. My job was to ensure that my workmen install the runway in accordance with this 'line'. I did not have any other guide except this 'line'."

He said that a discrepancy was discovered. The "lines" were not 32.030 m apart. He said:

> "… Mr Oga of Obayashi came to check the rail and confirmed that the problem was caused by the 'line' which had given to us by the surveyor. The line given to us was 31.060 metres (and not 32.030 metres). Mr Oga then directed that the installation of the runway (which had been done so far) to be redone. Mr Vincent Chin (from L&M) agreed to this and instructed [the plaintiff] to redo the works …."

Later in his affidavit he said that the wrong alignment was again given and Mr Marg a representative of the defendant ordered the affected section of the runway to be redone. Mr Oga, Mr Chin and Mr Marg did not give any evidence.

86. I find that the alignment was provided by the defendant by Mr Oga of Obayashi and that the rails were laid according to the alignment so provided. The plaintiff was not in breach of the implied term alleged or of any other term

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of his contract to provide labour for the installation of the runway. He is not liable for the damages claimed by the defendant and the defendant is not entitled to any set-off.

87. In the premises I allowed the plaintiff's claim and dismissed the defendant's counterclaim with costs.

Dated this 31st day of March 1999.

LIM TEONG QWEE

JUDICIAL COMMISSIONER

Lim Teong Qwee JC

Halijah binte Mohamad (Halijah Mohamad & Co) for the plaintiff
Chong Yee Leong and Bhaskaran Sivasamy (Rajah & Tann) for the defendant

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