Yaku Shin (JB) Sdn Bhd v Panasonic AVC Networks Singapore Pte Ltd and Another [2008] SGHC 87

Case Number : Suit 379/2006

Decision Date : 06 June 2008

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Manjit Singh and Sree Govind Menon (Manjit Govind & Partners) for the plaintiff; Tan Teck Wang, Melvin See and Sharon Liu (Rodyk & Davidson LLP) for the first and second defendants

Parties : Yaku Shin (JB) Sdn Bhd — Panasonic AVC Networks Singapore Pte Ltd; Panasonic Manufacturing Xiamen Co, Ltd

Restitution – Quantum meruit – Contingent counterclaim on quantum meruit – Whether contract needed before claim on quantum meruit might be made

6 June 2008 Judgment reserved.

Woo Bih Li J:

Introduction

1 The plaintiff, Yaku Shin (JB) Sdn Bhd ("YKJB") is a Malaysian company operating from Johor Bahru. Until March 2006, it was related to another company Yaku Shin (M) Sdn Bhd ("YKM"), a Malaysian company operating from Kuala Lumpur. YKM will feature prominently in the dispute before me. Both YKM and YKJB had at all material times the same parent company, *ie*, Foremost Holdings Bhd, which held 58.75% of the capital in each of these two companies. At all material times, YKM and YKJB had the same managing director, one Teh Hong Beng ("Teh").

2 The first defendant, Panasonic AVC Networks Singapore Pte Ltd ("PS") is a company incorporated in Singapore. The second defendant is Panasonic Manufacturing Xiamen Co Ltd ("PX"), a company incorporated in China. Both of these companies are part of the Panasonic group of companies.

3 The Panasonic group of companies operate a production supply chain. Component parts are first manufactured by or for a Panasonic company. The component parts are then sent to another party for assembly into semi-products ("the goods"). The goods are in turn assembled into final products by a Panasonic company.

4 YKJB's claim is against PS only. Its original claim, before any set-off, was for the purchase price of US$1,286,299.29 for the goods supplied by YKJB to PS under 96 transactions for five months from September 2005 to February 2006. YKJB's claim is based on contract and, alternatively, on quantum meruit.

5 However, YKJB accepts that the price of components delivered for the account of PS to YKJB between December 2005 to February 2006, amounting to US$236,754.15, is to be deducted from YKJB's claim although not the price for the components delivered to YKJB between September and October 2005.

6 On 26 July 2006, after the issuance of the Writ of Summons, PS paid US$85,768.52 to YKJB. This

sum represented the total of YKJB's invoices issued in 2006 (US$196,040.39) less the total value of the components supplied to YKJB in 2006 (US$110,271.87). Therefore, the 2006 supply of the goods by YKJB and the 2006 supply of components to YKJB are no longer in dispute. The price for components delivered in December 2005 to YKJB was US$126,482.28.

7 The remaining sum from YKJB's original claim is:

	US$1,286,299.29
Less:	
(a) Components delivered in 2006	110,271.87
(b) payment for 2006 goods less 2006 components	85,768.52
(c) December 2005 components	126,482.28
	US$ 963,776.62

I should mention that this claim of US$963,776.62 includes a sum of US$540,538.95 that PS has already paid to YKM in circumstances which I shall elaborate on later. If the latter sum is deducted, the balance will be US$423,237.67, which is less than the combined counterclaims of PS and PX, (see [8] and [9] below).

8 PS does not dispute that it received the goods from September to December 2005 from YKJB. However, its position is that, prior to 2006, the supply of such goods was pursuant to a contract between PS and YKM. Accordingly, YKM is the party it is liable to. Alternatively, if the contract was with YKJB, PS has a counterclaim for the price of components supplied to YKJB between October and December 2005. This counterclaim is therefore a contingent one based on the possibility that the court may find that the contract was between PS and YKJB. The counterclaim is based on quantum meruit only and not on contract because, apparently, when PS sought to amend its defence to include a counterclaim, an assistant registrar declined to allow it to include a counterclaim based on contract. PS's counterclaim amounts to US$372,278.48. However, this includes components supplied to YKJB in December 2005 for which credit has already been given by YKJB, (see [7] above). After deducting US$126,482.28 for the December 2005 components, PS's counterclaim should be for US$245,796.20.

9 PX is also making a contingent counterclaim for US$360,838.76, being the price of components supplied by it to YKJB between July and November 2005, if the court finds that PX's contract was with YKJB and not with YKM. However, PX's counterclaim is based on contract and, alternatively, on quantum meruit.

10 YKJB relied simply on the fact that it was undisputed that it had assembled the goods and delivered them to PS or its agents and that its invoices and delivery orders had been issued to PS without objection from PS. YKJB distanced itself from any earlier agreement signed by YKM if YKJB was not a party to such agreement. YKJB's position was that it was not bound by any such agreement. However, YKJB's approach was overly simplistic as I shall elaborate below. I would add that a court must consider the entire evidence and not just isolated pieces of evidence.

Background, submissions and conclusion

11 In an agreement dated 6 June 1995 ("the Basic Contract") between PS (under its old name) and

YKM, the parties thereto agreed to various basic terms for PS's purchase of the goods from YKM. Clause 24 of the Basic Contract provided for PS to lend machinery, equipment, tools, measurement instruments and moulding die, referred to as "Tool and Die" to YKM which were not to be re-lent without the consent of PS.

12 An agreement dated 1 October 2003 ("the 2003 Tri-Party Agreement") between PS, YKM and Panasonic Taiwan Co Ltd ("Panasonic Taiwan") provided for the sale of loud speakers by PS to YKM which would be used by YKM to assemble the goods for Panasonic Taiwan. The 2003 Tri-Party Agreement also allowed PS to seek payment from Panasonic Taiwan if YKM failed to make payment to PS.

13 An agreement dated 1 October 2004 ("the 2004 Tri-Party Agreement") between Panasonic Taiwan, YKJB and Panasonic AVC Networks Johor Malaysia Sdn Bhd ("Panasonic JB") provided for the sale of loud speakers by Panasonic Taiwan to YKJB which would be used by YKJB to assemble the goods for Panasonic JB. The 2004 Tri-Party Agreement also allowed Panasonic Taiwan to seek payment from Panasonic JB if YKJB failed to make payment to Panasonic Taiwan.

14 An agreement between PS, YKM and PX dated 1 April 2005 ("the 2005 Tri-Party Agreement") provided for the sale of loud speakers by PS to YKM which would be used by YKM to assemble the goods for PX. The 2005 Tri-Party Agreement also allowed PS to seek payment from PX if YKM failed to make payment to PS.

15 As is evident, YKJB was a party only to the 2004 Tri-Party Agreement. I should also mention that the Basic Contract expired, according to its terms, on 5 June 2000. YKJB repeatedly submitted that PS had suppressed this fact. I do not agree that PS had suppressed this fact. True, it did not draw the court's attention to this fact but it did refer to and disclose the Basic Contract. YKJB would easily have learned from the Basic Contract about the expiry date. Besides, as I mentioned, YKJB and YKM had the same managing director at all material times. In my view, YKJB's accusation about suppression was part of its overall strategy to cast PS in the worst possible light.

16 Although the Basic Contract expired on or about 5 June 2000, it was the case of PS that the parties thereto continued to act on the terms of the Basic Contract although there was no express reference to estoppel by convention in the pleadings of PS. So, for the pre-January 2006 transactions, paragraph 10 of the Defence and Counterclaim (Amendment No. 3) of PS states:

> Pursuant to the Basic Contract, and the 2003 and 2005 Tri-Party Agreements [Panasonic Singapore] issued purchase orders to [YKM] for the supply of semi-products …

17 The only witness for YKJB was Koid Hung Kuan ("Koid") and not Teh as one might have expected. Although records showed that Koid was appointed a director of YKJB only on 30 March 2006, he said that he was a proxy director (perhaps meaning an alternate director) from 2 March 2006.[note: 1] While he said that he was involved in the business of YKJB from 5 November 2005, he clarified that he was not running it then.[note: 2] He accepted that Teh was running YKJB before 15 November 2005 and up to February 2006.[note: 3] The date of 15 November 2005 is significant in the factual matrix because that is the date when Receivers and Managers ("R&M") of YKM were appointed.

18 It was Koid's own evidence that YKJB had been assembling the goods supplied to PS since January 2005.[note: 4] This is significant because YKJB was repeatedly submitting that it was brought or drawn into the picture (only) from September 2005 when YKM was facing financial difficulties.

19 The witnesses for PS were:

(a) Ngoh Cherng Fah ("Ngoh"), General Manager of its Global Procurement Centre;

(b) Chua Kim Hong, its Information Technology Manager;

(c) Hu Shiliang ("Hu"), an Assistant Senior Executive;

(d) Teoh Boon Lean ("Teoh"), the Sales & Marketing Manager of Supportive Technology Sdn Bhd ("Supportive"); and

(e) Adeline Chan Wai Leng, a trainer with BeXcom Southeast Asia Pte Ltd.

20 The witness for PX was Chen Chung Hsing ("Chen"), the department manager of the Electronic Device Sales Department, Device Technology Domain Business, Panasonic Taiwan which is a subsidiary of PX.

21 The evidence, primarily from PS and PX, was as follows:

(a) All along since the Basic Contract, PS would issue its purchase orders through an internal portal referred to as the "e-Procurement" system. Therefore, it was only through access to this system that one would know what the purchase order of PS was.

(b) Only YKM was issued with an identification ("ID") and password to gain access to this system. YKJB was not issued its own ID and password.

(c) PS had lent Tool and Die equipment to YKM for the assembly of the goods. From Koid's evidence, YKJB was using such Tool and Die equipment.

(d) YKJB was issuing purchase orders (under YKJB's letterhead) to PX for components to be used in the assembly of the goods and PX's invoices were addressed to YKJB. However, payment was being made not by YKJB but by YKM to PX.

(e) PS required the issuance of standard tax invoices on delivery of the goods to it. According to Koid, YKJB's staff was inserting the details in the standard tax invoices. For such invoices up to 11 November 2005, the vendor was stated to be YKM, not YKJB. Furthermore, the unique vendor code "Y100" assigned by PS to YKM was inserted in such invoices.

(f) YKJB's own invoices and delivery orders refer to and quote the purchase order numbers issued by PS through the e-Procurement system of which access had been given by PS to YKM.

(g) YKJB's own invoices and delivery orders refer to and quote the standard tax invoice numbers.

(h) PS's authorised representative, Integrated Agency Pte Ltd, had acknowledged delivery of the goods on some delivery orders issued by YKJB but not on YKJB's own invoices.

(i) Up to end August 2005 and even thereafter, payments for the goods were made by PS to YKM without complaint by YKJB until late November 2005.

22 However, YKJB submitted that it was brought into the picture because YKM was facing financial difficulties in September 2005.

23 It is true that Supportive, a supplier of some components, was facing difficulty in getting payment from YKM in September 2005. The evidence from Supportive was that it then asked for PS to be responsible for its payment from October 2005. However, there was no evidence from YKJB that YKJB also then asked PS to be responsible for its payments, instead of YKM. As I have mentioned, while YKJB was asserting that it was brought into the picture from September 2005, this was obviously untrue. On Koid's evidence alone, it had been in the picture since January 2005. As submitted by PS, there was no change in September 2005 as far as YKJB's role of delivering the goods to PS was concerned.

24 There was some change from 11 November 2005 when YKJB's staff unilaterally inserted YKJB's name, instead of YKM's as the vendor in the standard tax invoices from 14 November 2005. However, the vendor code remained the same and there was no evidence that PS had then agreed with Teh, or any other representative of YKJB for that matter, that it would henceforth contract with YKJB.

25 As mentioned above, the R&M were appointed on 15 November 2005. Presumably, YKJB knew of this imminent development since its staff had started to change the name of the vendor in the standard tax invoices from 14 November 2005.

26 Even Koid accepted that before 15 November 2005, PS had no contractual obligation to pay YKJB. His evidence at NE 17 October 2005 was as follows:

> Court: Maybe it is easier, if you want to do it one step at a time, before the receivership, or assuming there's no receivership, what would the position be?
>
> Then after that you can explain.
>
> A: Before the receivership, as long as the first defendant continued to pay Yaku Shin (M) and Yaku Shin (M) subsequently pays to the plaintiff, as a businessman, it will be perfectly all right for me.
>
> Court: I think that's not the question. Is the first defendant obliged to pay JB? In other words, supposing the first defendant pays Yaku Shin (M) and M does not want to pay JB – forget about receivership – let's say M changes its mind and doesn't pay JB. Can JB say to the first defendant: you are obliged to pay me?
>
> A: As a businessman, JB will try, but I will agree that it is not an obligation of the first defendant to pay then, but JB will then make a decision as to stop the business.
>
> Court: So now carry on explaining about the receivership and so on.
>
> A: When the receiver came in and we realised that the first defendant – the plaintiff realised that the defendant was continuing to make payment based on the plaintiff's invoices to Yaku Shin (M) under receivership, we immediately informed the first defendant and we have actually in our letter offered them the room for discussion, but that was turned down and instead was returned by funny, funny requests as to, like, the statement of affairs of Yaku Shin (M). I was just talking about how do we resolve the matters.
>
> Mr Tan: I appreciate that answer. You said that, assuming there's no receivership, the first defendant in this situation has no obligation to pay the plaintiff?
>
> A: Yes.

Q: Now in our case, the actual case we have, the plaintiff is suing the first defendant for invoices issued before the receivership of Yaku Shin (M). That means the invoices were issued before 15 Novermber 2005?

A: And after.

Q: And after.

A: Yes.

Q: In respect of those invoices issued before 15 November 2005, do you agree, therefore, that the first defendant has no obligation to pay the plaintiff?

A: I agree, but in business practice the first defendant, because of invoicing and the way that the business was being carried out, has the obligation to sit down for a discussion.

Q: So you say there is no contractual obligation but there's a moral obligation to discuss with you. Is that what you say?

A: In business.

Q: Let me clarify. You say there is no contractual obligation, but, according to how business should be conducted, they must come and discuss with you.

That's what you are saying, correct?

A: Yes. At the same time the service of the plaintiff was continued to be required.

27 Although Koid was not running YKJB at the material time, he claimed to be involved in its business. He appeared to have some knowledge of its transactions although not as much as Teh. More importantly, he could have declined to answer any question if he was not in a position to answer. His evidence was telling against YKJB's contention that PS was liable to YKJB for transactions from September 2005 onwards.

28 The evidence from Ngoh was that PS learned about the appointment of the R&M later in November 2005 although the formal notice of appointment from the R&M was received in January 2006.

29 Significantly, there was no evidence that upon the appointment of the R&M, YKJB and PS then reached agreement to enter into a fresh contract as between themselves for the supply of the goods by YKJB to PS.

30 YKJB's pleaded case was that it had a contract with PS from September, not November 2005. Its position initially was that it was brought into the picture from September 2005 and not that there was a change from 15 November 2005.

31 I have elaborated above as to why I say that YKJB was not brought in only in September 2005 and why PS's contract was initially with YKM. Was there a change when the R&M were appointed? YKJB was not asserting this initially and neither was PS. Yet, in the midst of the trial, Koid was suggesting that all contracts with YKM would terminate upon the appointment of the R&M, a point taken up in YKJB's closing reply as well.

32 PS was relying on *Halsbury's Laws of Singapore* Vol 6, 2006 Reissue, at paragraph 70.413 which states:

> …
>
> In contrast to contracts of employment, other contracts entered into by the company before a receivership are not terminated upon the appointment of a receiver.

33 On the other hand, YKJB was relying instead on another paragraph, *ie*, paragraph 71.414 which states:

> …
>
> However, more commonly a receivership places such substantial assets in the hands of the receiver that the company must cease business. …

34 There is in my view no contradiction between these two passages. Generally speaking, the appointment of receivers does not in itself terminate existing contracts (which are not employment contracts). It is for the receiver to terminate such contracts if he wishes. Until he does so, such contracts continue. If his task is not to continue the business, then he should terminate such contracts so that the company may cease business.

35 If YKJB and its solicitors had genuinely believed that the very appointment of the R&M had terminated all contractual relationships between YKM and PS, this would have been stated in YKJB's pleadings or in Koid's affidavit of evidence-in-chief ("AEIC"), and not so late in the day.

36 I come now to a letter dated 29 November 2005 from Teh to PS which was issued on the letterhead of YKJB. It was not clear when this letter was actually sent and received but parties accepted that it would have been before Ngoh's reply e-mail dated 24 December 2005. This letter states:

> We thank you for your payment made for our invoices dated 04th November, 2005 according to your payment advise note as at 04th November 2005 to Yaku Shin (M) Sdn.Bhd. amounting to USD 800,417.05 out of which USD 540,538.95 are due to Yaku Shin (JB) Sdn. Bhd.
>
> Since and you are aware that Yaku Shin (M) Sdn. Bhd. is currently under receivership, we will not agree for the receiver to continue to receive payment on our behalf. We request payment due to delivery of goods by Yaku Shin (JB) Sdn. Bhd. to be paid directly to Yaku Shin (JB) Sdn. Bhd. account from the next payment onwards.
>
> We understand that you would have a concern over the legal implications of our request, we advise that you seek the advise of your legal adviser before agreeing with our request and we will be available anytime at your request to clarify the said matter.

37 PS submitted that this letter demonstrated that there was no protest by Teh about the payment of US$540,538.95 made by PS to YKM for goods supplied by YKJB. On the other hand, YKJB stressed that there was a distinction between payment terms and the persons who were parties to the contract. YKJB stressed that this letter was consistent with its position that PS's contract was with YKJB but that initially payment was to be made by PS to YKM.

38 I accept that looking at this letter in isolation, it was not inconsistent with YKJB's position that

PS's contract was with YKJB and not with YKM. However, at the very minimum, the letter demonstrated that there was no cause for redress by YKJB for the US$540,538.95 already included by PS when it made payment of US$800,417.05 to YKM. Indeed, this letter was thanking PS for payment of the US$540,538.95. Yet, YKJB's present claim includes this sum of US$540,538.95. In other words, YKJB wants PS to pay this sum again, this time to YKJB itself and to claim a refund from YKM which is under receivership.

39 I would add that according to Ngoh, the payment to YKM was made on or about 18 November 2005 but before PS was aware of the appointment of the R&M. That is why Ngoh considered the payment as having been made to YKM and not to the R&M.

40 In any event, it is immaterial whether PS knew about the appointment of the R&M when it made the payment. It is clear to me that YKJB is not entitled to payment of the US$540,538.95 because:

(a) either PS's contract was with YKM and not YKJB; or

(b) even if it was with YKJB, YKJB had authorised payment to be made to YKM before the letter of 29 November 2005.

41 I would add that while this letter was not inconsistent with YKJB's position that PS's contract was with YKJB, it still did not explain when and how that alleged contract came about.

42 I come now to Ngoh's e-mail reply dated 24 December 2005. It states:

> Refer to your letter of "Payment Instruction Request" dated 29/Nov/05.
>
> Sorry for late reply.
>
> Regard to your request to make payment directly to Yaku Shin (JB) for those delivery make by Yaku Shin (JB), sorry I can not agreed your request and we need to discuss further, pls make clear the following:
>
> 1. what is the relationship between Yaku Shin (M) and Yaku Shin (JB) before and after under receivership (Yaku Shin (M) under relationship as mention in your letter). Pls provide support documents.
>
> 2. PSG do not receive any instruction from Yaku Shin (M) to change the payment to Yaku Shin (JB), as you know all the transaction payment is make to Yaku Shin (M).
>
> 3. Have you discuss this matter with receiver? and what is their decision?

43 Teh's e-mail response dated 28 December 2005 states:

> Refer to your letter of "Payment Instruction Request" dated 29/Nov/05.
>
> Sorry for late reply.
>
> Regard to your request to make payment directly to Yaku Shin (JB) for those delivery make by Yaku Shin (JB), sorry I can not agreed your request and we need to discuss further, pls make clear the following:
>
> What is the relationship between Yaku Shin (M) and Yaku Shin (JB) before and after under

receivership (Yaku Shin (M) under relationship as mention in your letter).

Pls provide support documents.

- Their relationship has been presented in my previous presentation. Both companies are the subsidiaries of Foremost Holdings Bhd which it held 58.75% of the total number issued shares respectively. In the legal point of view, YKSJB is a separate legal person.

…

PSG do not receive any instruction from Yaku Shin (M) to change the payment to Yaku Shin (JB), as you know all the transaction payment is make to Yaku Shin (M). Have you discuss this matter with receiver? and what is their decision?

- At this junction, the Receivers & Managers has vested controlled over YKSM. All of the directors are basically have no power to exercise control over YKSM.

- As far as YKSJB is concern, this company buys raw materials under their name to produce PSG's model. Naturally, it is reasonable and fair for YKSJB to receive payment from PSG for the finished goods produced so that all vendors ie Tamaco, Samco and others can be repaid. The last payment withheld by receivers & managers was a painful experience.

- With the creation of new vendor code for YKSJB that we have discussed earlier, it is logical for all future production payment to be channelled to YKSJB.

- At this moment, I don't see any needs for us to discuss with receivers & managers especially matters related to YKSJB.

(I have emphasized the reply in bold print).

44 In my view, this exchange of e-mail supported PS's position that there was no contract with YKJB for the supply of goods as at or about 15 November 2005. Had there been one, Teh's e-mail would have stressed this but this time, he was stressing instead that it would be reasonable and fair for YKJB to receive payment. There was no reference by Teh to any oral agreement reached between PS and YKJB in September or in November 2005. Interestingly, Teh also referred to a new vendor code to be created for YKJB.

45 There was a meeting between Teh, Ngoh and one Clement Soh (both representing PS) and Chen representing PX on 5 January 2006. Although Koid was not present at this meeting, he accused PS, in his AEIC, of concocting evidence as to what transpired at the meeting. He withdrew this allegation in cross-examination. According to the AEIC of Ngoh:

(a) Teh had suggested at this meeting that sums due from YKM to PX for November and December 2005 deliveries of components could be transferred to the account of YKJB if PS agreed to pay to YKJB whatever was due to YKM. Ngoh however replied that such an arrangement could be possible with the consent of YKM but there was no such consent.

(b) Teh had said that if the assembly of the goods was to continue, PS was required to open a separate account for YKJB and issue purchase orders to YKJB.

(c) As there was no other alternative, PS agreed to open a separate account and assign a

unique vendor code to YKJB. To facilitate such steps, PS requested YKJB to produce its audited financial report for FY2005 and the statement of affairs for YKM. However, the documents requested were not furnished and the separate account and unique vendor code were not created or assigned.

(d) Accordingly, YKJB could not log onto the e-Procurement system to extract purchase orders issued and PS had to issue such orders by e-mail to YKJB.

46 Ngoh's evidence on the 5 January 2006 meeting was effectively unchallenged. In the circumstances, it was not open to YKJB to submit in paragraph 42 of its closing reply that no vendor code was in fact assigned to YKJB in 2006. The reason why it was not assigned had been explained in Ngoh's AEIC. According to YKJB, some of the standard tax invoices in 2006 continued to contain YKM's vendor code. However, the point that PS was making was that by 2006, it had agreed to contract directly with YKJB. I would add that the vendor code was only one of the facts that PS was relying upon to establish that the contract was with YKM throughout 2005.

47 By a letter dated 6 April 2006, Malaysian solicitors, Chellam Wong, acting for YKM, sent a letter of demand to PS for US$145,904.15. This sum did not include any claim for the disputed transactions, *ie*, deliveries which had physically been made by YKJB to PS (or its agent).

48 Before any response was given to this letter, Koid met up with Ngoh on 24 April 2006 at PS's office. According to Koid, he also handed Ngoh a document (dated 14 April 2006) to inform Ngoh of the total amount which YKJB was claiming to be due from PS. The total amount stated to be due was US$569,061.79. There was no claim in the document for the US$540,539.95 which had been paid to YKM but is still the subject of YKJB's present claim.

49 According to Koid, he said at the meeting that if PS would pay YKJB on YKJB's invoices issued before 15 November 2005, he was prepared to allow a set-off for outstanding invoices of PX. However, he agreed that Ngoh (again) required the statement of affairs of YKM to be produced. Koid's response was that Teh was responsible for that.[note: 5]

50 After the 24 April 2006 meeting, Rodyk & Davidson ("R&D"), solicitors for PS, replied on 11 May 2006 to Chellam Wong's letter of demand to say that the debt claimed by YKM had been extinguished because of set-offs. R&D also required the return of the Tool and Die equipment by 18 May 2006. This was not done.

51 Subsequently, a different letter of demand dated 30 May 2006 was sent, this time by Manjit Govind & Partners ("MGP") acting for YKJB, to demand payment from PS to YKJB. The letter of demand states:

1. We act for Yaku Shin (JB) Sdn Bhd.

2. Our clients instruct us that you are indebted to them for the above-stated sum arising from a course of dealings, the full particulars of which are known to you and short particulars of which are in our clients' summary attached.

3. It is our clients' impression that the said sum has been retained on unfounded grounds. The records will bear out that the invoices and delivery orders evidence and support our clients' claim. Our instructions are that the delivery of the finished products has always been to your warehouse at Tuas, Singapore effected by our clients.

4. In the circumstances, our clients regret that they cannot extend any further indulgence in time. Our clients require payment to be effected immediately through us as their solicitors in Singapore or directly to them in their stated account. Our clients authorise you to deduct from the said sum the exact value of the components delivered by Panasonic AVC Networks Singapore Pte Ltd to our clients in JB. [Our clients would require an exact itemisation and supporting documents for this deduction. Our clients records show an approximate figure of US$200,000/-].

5. Formal Demand is hereby made to you for the sum of **US$1,286,299.29** (less the appropriate deductions).

6. Take Notice that unless the sum of US$1,286,299.29 (less the appropriate deductions) is paid to us or directly to our clients within seven (7) days from the date of this letter, our instructions are to commence proceedings against you without further reference in which event our clients will be claiming for interest and costs.

7. In the event proceedings are made necessary, please advise whether you wish service to be effected at your registered office or otherwise.

It is unnecessary for me to set out the summary attached which was a table of dates and amounts outstanding. However, I will mention here that the US$1,286,299.29 being claimed included the US$540,538.95 already paid to YKM.

52 R&D replied on 6 June 2006 to dispute the claim. Their reply ("the June 2006 reply") states:

We act for Panasonic AVC Networks Singapore Pte Ltd and refer to your letter dated 30 May 2006 to our clients.

Our clients deny your clients' claim for the sum of USD1,286,299.29. The amount claimed is grossly inflated and inconsistent to the assertions made by your clients' director, Mr Koid Hung Kuan.

Your clients' claim is further without merit as your clients' previous managing director Mr Teh Hong Beng had, in the various meetings between himself and our clients from November 2005 to January 2006, agreed to a set-off of the amounts owed by our clients against:-

(1) the value of components delivered by our clients to your clients;

(2) the value of components delivered by Panasonic Manufacturing Xiamen Co Ltd to your clients.

This much has been acknowledged at paragraph 4 of your letter. Our clients' rights of set-off far exceed your clients' "*approximate figure of USD 200,000*".

The debt obligation of our clients to your clients has thereby been extinguished and our clients are not liable to pay your clients any amount at all.

We are further instructed to highlight that our clients are surprised that they have received your letter of demand in the midst of discussions between our respective clients.

We have our clients' instructions to accept service of process. Please note that our instructions are to resist any claim that your clients may file in court against our clients.

53 Not surprisingly, YKJB placed much reliance on the June 2006 reply. It stressed the following points from that reply:

(a) PS had acknowledged and accepted that YKJB is a contracting party to whom a debt is owing.

(b) There was no dispute as to the course of dealings between YKJB and PS.

(c) There was no reference to YKM.

(d) There was no story about any principal/agency relationship between YKM and YKJB (which had been raised in PS's defence).

(e) PS's declared position was that first, the amount claimed by YKJB against them was "*grossly inflated*"; second, that there had been a set-off agreed.

(f) There was recognition of the contractual relationship, recognition of the debt and an assertion of an agreed set-off.

(g) There was no reference to Supportive.

(h) The set-off was asserted as arising from components delivered by PS and by PX.

(i) By reason of the said set-off, the "*debt obligation*" of PS to YKJB was said to have been extinguished and hence no amounts were due.

54 The fact that the June 2006 reply did not refer to Supportive is in my view irrelevant and I am surprised that YKJB sought to make something out of it. It is not in dispute that some components delivered to YKJB for the assembly of the goods were delivered by Supportive for the account of PS and not by PS itself. Indeed, the evidence is not clear whether PS itself had delivered any components to YKJB. Even if it did, there was no valid reason to draw a distinction between components delivered by PS and those delivered by Supportive for PS's account.

55 I accept that the June 2006 reply did not assert that in 2005, the contractual relationship which PS had was with YKM and not YKJB. That was certainly a factor in favour of YKJB's claim. This, together with the other factors which YKJB were relying on, (see [10] above), might have been sufficient for YKJB to win the day if there was no other evidence. However, there was other evidence as I have elaborated on.

56 Furthermore, it seems to me that paragraph 4 of MGP's own letter of demand was suggesting a total set off by PS of all components delivered by PS. This in turn suggested that all components delivered for PS's account could be set off as no distinction was drawn in MGP's letter between Supportive and PS. There was also no distinction drawn between transactions in 2006 and those in 2005 or between transactions in December 2005 and those in October to November 2005. The June 2006 reply is not inconsistent such suggestions.

57 Also, MGP's letter came at a time when parties were discussing a set off. It seems to me that in Ngoh's mind, he was thinking of a total set off both for components supplied by or on behalf of PS and by PX. That is why the June 2006 reply refers to both PS and PX and expressed surprise at the letter of demand in the midst of negotiations.

58 Besides, since YKJB was placing so much emphasis on its invoices and delivery orders, why did it, on the other hand, refute PX's counterclaim even though YKJB had issued purchase orders to PX on YKJB's own letterhead and PX's invoices were addressed to YKJB? PX was prepared to say that its primary position was that its contract was with YKM pursuant to one of the tri-party agreements, notwithstanding YKJB's purchase orders and PX's invoices to YKJB. However, if the court was to conclude that its contract was with YKJB, then YKJB should be liable to PX for the components it supplied. When YKJB was refuting PX's counterclaim, it was choosing to ignore YKJB's own primary position and emphasizing instead PX's primary position when it suited YKJB's own purpose. It seems to me that YKJB was blowing hot and cold for its claim and PX's counterclaim respectively. It must be consistent with itself and not partly with itself and partly with PX. At least PX was consistent with its own primary position. Its claim against YKJB is only a contingent one.

59 Insofar as YKJB has pleaded estoppel, it has referred to its own invoices and delivery orders and the absence of objection by PS, as well as the June 2006 reply.

60 I do not see how YKJB can avail itself of that reply to plead an estoppel as that reply came into existence after all the disputed transactions had been completed, except for payment. It is evidence which YKJB can and has relied on but it is not a factor to support an estoppel. As for all the other factors pleaded, there was no plea that YKJB was led to believe at the material time that PS was dealing direct with it contractually, as opposed to physical assembly and delivery of the goods. Teh's letter (of 29 November 2005) is silent on this and his e-mail (of 28 December 2005) suggests otherwise. Furthermore, Teh was not called by YKJB to give evidence even though his evidence would have been particularly important for the estoppel point.

61 YKJB pointed out that the writers of the June 2006 reply were stated to be Gerald Singham ("Singham") and Loh Jen Wei, solicitors in R&D. YKJB submitted that it was not disputed that Singham was at all material times a director of PS. However, in my view, it does not necessarily follow that because a solicitor is also a director of a company, he has personal knowledge of the routine operations of the company. I presume that YKJB's solicitors must be aware of this and yet, without establishing the necessary evidence, YKJB sought to imply more. I add that Ngoh said that he did not know that Singham was a director of PS. I have no hesitation in declining to place any weight on the fact that Singham was a director.

62 It is appropriate at this stage to deal with arguments of YKJB other than its reliance on the June 2006 reply.

63 YKJB submitted that although PS made payments for the 2006 transactions, it would not have done so but for the present action. Even then, the payment was made on 26 July 2006 after an application for summary judgment was filed on 20 July 2006. Furthermore, another sum of US$13,148.80 was paid only on 17 October 2007. These submissions were made to show how unreasonable PS was. I am of the view that YKJB's criticisms were unduly harsh and unfair. It must be remembered that the parties were still in negotiation as at April 2006. The negotiations covered dealings with YKM, YKJB, PS and PX. The negotiations did not end with a threat of legal proceedings from YKJB. That threat only came about with the letter of demand from MGP.

64 Presumably, after the Writ of Summons was filed (on 16 June 2006) and served, PS would have had to review its position and then make payment thereafter of such sum as it was prepared to pay. The fact that some payment was made fairly promptly thereafter was to its credit rather than discredit. Besides, parties informed me that PS has been ordered to pay interest on the first payment so PS has not benefited from its late payment of US$85,768.52. As for the payment of another US$13,148.80, PS's counsel explained that payment was made because YKJB produced some more

supporting documents for the transactions in question. It was not disputed that YKJB had produced some more supporting documents. In my view, this payment was again to the credit, rather than discredit, of PS.

65 YKJB also relied on a summary of transactions which Hu said he had prepared. During cross-examination, Hu said that he had been asked to summarise transactions and he prepared a summary. The summary was handed to Ngoh or Clement Soh whom he described as his boss. He was unable to say when it was prepared nor did he say what it contained. Latching onto this piece of evidence, YKJB submitted that the summary had been suppressed as it had not been disclosed. YKJB also submitted at paragraph 34(i) and paragraph 64(ii) of its closing submission that the summary "goes to the heart of the issue" and alleged dishonesty.

66 As YKJB itself did not know what the summary actually contained and neither did the court, I am of the view that its submission was overly dramatic. I also note that YKJB did not ask for Ngoh to be re-called to the stand to give evidence about this summary. In any event, based on the evidence as it stands, I cannot give any weight to YKJB's submission on it.

67 I would add that in the course of Ngoh's cross-examination, he was asked by YKJB's counsel to prepare a table of transactions. He did so subsequently, without the aid of PS's counsel as his cross-examination had not been completed. This table was admitted at the request of YKJB as exhibit "P4". The figures in the table, however, did not tally with those in another exhibit "D1". As exhibit "P4" appeared to show a sum owing to PS instead of a sum owing from PS, YKJB suggested that this was evidence of dishonest conduct on PS's part.[note: 6]

68 In my view, such a suggestion was again overly dramatic. According to Ngoh, exhibit "P4" contained all transactions with YKM (not YKJB). Yes, there were discrepancies between exhibit "P4" and exhibit "D1" but YKJB's counsel did not continue asking Ngoh to elaborate on exhibit "P4". Also, PS's counsel did not question Ngoh on it for the reason that PS was and is not relying on exhibit "P4". I do not see how "P4" can be evidence of PS's dishonest conduct when PS is not relying on it. It seems to me that Ngoh had his own reasons, which were not fully explained, as to what the figures in exhibit "P4" represented. In any event, since neither side was relying on it as an accurate representation of its position in the present trial, I did not consider the figures therein any further.

69 There was yet another attack by YKJB. In its submission, it alleged that Ngoh had said on 19 October 2007 during the trial that PS was prepared to assist YKJB by informing the R&M that the goods were assembled by YKJB and were received by PS. Yet, on 20 February 2008, Ngoh confirmed that he had not notified the R&M of these facts. I am of the view that this attack was uncalled for. The impression given to me was that if PS was asked by YKJB to notify the R&M of these facts, it would. There was no follow-up request by YKJB for that to be done.

70 YKJB also suggested that because YKM was not making a claim on the disputed transactions, this demonstrated that the contract for those transactions was with YKJB and not YKM. I do not agree. There may be various reasons why the R&M are not making a claim for those transactions, for example, YKM's records may not be complete and/or the R&M may think that with the counterclaim by PS and/or PX, it is not worthwhile to pursue that claim. Whatever the reason, PS's legal position cannot be dictated by the unilateral act or omission of the R&M. Even if the R&M were to authorise payment of the disputed transactions to YKJB, PS is entitled to ask for set offs to be taken into account.

71 The suggestion by YKJB that it was for PS to call witnesses from YKM or the R&M to establish that the contract for the disputed transactions was with YKM does not fly. It is for YKJB to prove its

case and not for PS to prove its version.

72 YKJB also suggested that I should draw an adverse inference for PS's omission to call Clement Soh as a witness. I do not think this omission was as serious as the omission of YKJB to call Teh as a witness. Ngoh was able to give evidence satisfactorily on the transactions whereas Koid knew less than Ngoh. However, YKJB submitted that as Teh was no longer with its employ, there was no reason or necessity to call him and the documents speak for themselves. I reject this submission since Teh obviously knew more than Koid and was the one liaising with PS. Furthermore, YKJB was attempting to rely on estoppel as I have mentioned. I draw an adverse inference against YKJB for not calling Teh as a witness. Nevertheless, I clarify that my conclusion against YKJB's primary position remains even without any adverse inference being drawn against YKJB.

73 It is true that PS pleaded that YKJB was acting as an agent of YKM when it assembled the goods and delivered the same but in my view, PS does not have to establish the exact nature of the relationship between YKM and YKJB if YKJB does not succeed in establishing, in the first place, that PS's contract was with YKJB.

74 To round up, I refer to a list of points which YKJB's counsel prepared. This was admitted as exhibit "P6". Insofar as the points are relevant, they have largely been covered in my judgment and it is not necessary for me to list them here. As regards the point that Ngoh had admitted that he had said in the 5 January 2006 meeting that, in principle, PS would pay YKJB, this point should not be divorced from the issue of set-offs. In any event, YKJB has not relied on that meeting as constituting or evidencing a separate agreement by PS to pay YKJB.

75 Taking the evidence in totality, I am of the view that the supply of the goods for the disputed transactions was pursuant to PS's purchase orders issued to YKM pursuant to the Basic Contract which both these parties had been operating under. YKJB was performing the obligations of YKM. To that extent, it was probably an agent of YKM but it is not necessary for me to decide the relationship as between YKM and YKJB. There was no change in this state of affairs until 2006. The contract for the disputed transactions in 2005 was therefore between PS and YKM. I also conclude that PX's supply of components in 2005 to YKJB was pursuant to a contract between PX and YKM.

76 I come now to YKJB's claim on the basis of quantum meruit.

77 Relying on *Morrison-Knudsen Co Inc v British Columbia Hydro and Power Authority* [1978] 85 DLR 186 ("*Morrison*"), PS submitted that YKJB was not entitled to make its claim on this alternative basis because it had elected to sue on the basis of an asserted contract. However, I note that the facts in *Morrison* were different. In that case, there was a contract and when the defendant was in breach of the contract, the plaintiff continued with the same and completed it. In those circumstances, the British Columbia Court of Appeal held that the trial judge should not have granted judgment to the plaintiff on a quantum meruit basis but on a contractual basis.

78 PS also relied on *Scarf v Jardine* [1882] 7 HL 345 to submit that YKJB had elected on its choice of cause of action. Again, the facts there were different. In that case, the plaintiff could have sued one set of partners or another for the supply of goods to a firm. As the plaintiff had sued one set of partners who actually got the benefit of the goods supplied, the House of Lords held that the plaintiff was not entitled in the circumstances to rely on estoppel to sue the other set of partners.

79 Next, PS relied on *Rabiah Bee bte Mohamed Ibrahim v Salem Ibrahim* [2007] 2 SLR 655 ("*Rabiah*"). It submitted that this case is authority for the proposition that generally there are two categories of quantum meruit: (1) Contractual quantum meruit – where there is an express or implied

contract which is silent on the quantum of remuneration or where there is a contract which states that there should be remuneration but does not fix the quantum; and (2) Restitutionary quantum meruit – where an innocent party has rendered services or has supplied goods under a contract, which has not been substantially performed and which has been determined by him because of the other party's breach and the party in breach cannot deny that he has received a benefit, the innocent party may recover the value of the services rendered or the goods supplied on a quantum meruit rather than sue for damages for loss arising from the breach.

80 Insofar as PS was suggesting that there must be a contract between the parties whether under contractual or restitutionary quantum meruit, I believe that it has misread paragraph 124 of the judgment of *Rabiah*. Paragraph 124 was referring to a judgment (of L P Thean JA) in *Lee Siong Kee v Beng Tiong Trading, Import and Export [1988] Pte Ltd* [2000] 4 SLR 559 where the court was referring to the plaintiff's claim for a quantum meruit on a restitutionary basis. The plaintiff had relied on a passage in Goff and Jones *The Law of Restitution* (5th ed, 1998) which states at page 531:

> [I]f the innocent party has rendered services or has supplied goods under a contract, which has not been substantially performed and which has been determined by him because of the other party's breach, he may recover the value of the services rendered or the goods supplied, on a *quantum meruit* or a *quantum valebat* respectively, rather than sue for damages for loss arising from the breach…

81 It seems to me that that passage is citing an illustration when a restitutionary claim on a quantum meruit may be made but it is not exhaustive. It does not mean that there must always have been a contract first before a claim on a quantum meruit may be made. Otherwise, the famous illustration of an intruder being entitled to claim on a quantum meruit for work which confers a benefit will no longer apply since there will not be any contract with the intruder in the first place.

82 Nevertheless, I agree that YKJB's claim on a quantum meruit must fail for the simple reason that this is not a case where PS is unjustly enriched. I have found that PS's liability for the disputed transactions is to YKM. Furthermore, if PS is also liable to YKJB on a quantum meruit, then it has double liabilities, one to YKM and one to YKJB, which cannot be right. YKJB's recourse is against YKM whether on an express or implied contract or on some other basis.

83 Interestingly, YKJB itself inadvertently recognised the defect in its own claim on a quantum meruit when it criticised PS for making an alternative claim against YKJB on a quantum meruit. Paragraph 12 of YKJB's submission in respect of PS's counterclaim states:

> With respect, [PS's] Counterclaim is baseless. Where the appropriate relief available to a litigant lies in contract against a party, his relief is against that party; Not against another party and by way of invoking quantum meruit. Put simply, where there is a contract between A and B that affords A the right to sue B in contract for the reliefs sought, A cannot invoke a claim in quantum meruit against a different party, C.

84 In the circumstances, the counterclaims of PS and PX which were premised on a finding by the court that the course of contractual dealing was with YKJB, also fail. I do not think that it was an abuse of process to make such counterclaims as YKJB was suggesting. They were made in case the court should not agree with the primary contentions of PS and PX. Such counterclaims were no more an abuse of process than YKJB's own alternative claim based on quantum meruit. Indeed, I am of the view that YKJB's alternative claim had even less merit than the counterclaims of PS and PX because if YKJB does not succeed on contract, it will be because the court finds that PS's contract is with YKM. In such circumstances, an alternative claim by YKJB on quantum meruit will not be valid, as I have

explained.

85 In the circumstances, I dismiss the main claim of YKJB but I will grant it judgment for interest on the US$13,148.80 at the same rate of interest as was allowed for the US$85,768.52 from the date of the Writ to payment. YKJB is to pay 95% costs of the action to PS, subject to the following qualifications:

(a) Neither YKJB nor PS is liable for the cost of YKJB's claim in respect of the US$13,148.80. That sum was paid promptly when further documents were disclosed, and in any event, the getting up for that claim is negligible in the totality of the entire evidence produced at trial.

(b) YKJB is not liable for costs in respect of PS's claim for Tool and Die equipment which was withdrawn.

(c) YKJB is not liable for the costs of the subpoena for Watanabe Takeshi who was not called as a witness. Although Teoh was called as a witness, I am also of the view that YKJB is not liable for the costs of preparing his AEIC and his oral evidence as most of Teoh's evidence was in respect of PS's counterclaim. For the avoidance of doubt, YKJB is liable for the costs of preparation of the AEIC of Norihisa Mimura and the AEIC of Ou Fu Chih even though they were not called to give evidence since initially there was no admission of documents which each of these persons had signed. Again, for the avoidance of doubt, YKJB is also liable for the costs of preparation of all other AEICs prepared for PS.

86 I have taken [85(b) above] into account when I allowed PS 95% , instead of 100%, of the costs of the action.

87 For the avoidance of doubt, I also dismiss the counterclaims by PS and by PX. These counterclaims were made because of YKJB's own premise, *ie*, that the course of contractual dealings was with YKJB. As PS and PX did not ask for costs of the counterclaims if such counterclaims were to be dismissed, I am of the view that each party should bear its own costs for these counterclaims.

[note: 1] NE 15/10/07 pg 21-2

[note: 2] NE 15/10/07 pg 22-3, 25 to 30 and NE 16/10/07 pg 8

[note: 3] NE 16/10/07 pg 12-5

[note: 4] NE 17/10/07 pg 137-8

[note: 5] NE 18/10/7 pg 38-9, 43-4

[note: 6] NE 21/2/08 pg 17

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