BM Building Pte Ltd *v* Chua Thiam Siew
[2010] SGHC 367

Case Number : Suit No 628 of 2009

Decision Date : 22 December 2010

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Lee Mun Hooi and Lee Shihui (Lee Mun Hooi & Co) for the plaintiff; Victor Yip (Teh Yip Wong & Tan) for the defendant.

Parties : BM Building Pte Ltd — Chua Thiam Siew

Tort

22 December 2010 Judgment reserved.

Woo Bih Li J:

Introduction

1 The present suit involves a libel action brought by the plaintiff, BM Building Pte Ltd ("BMB") against the defendant, Chua Thiam Siew ("Chua") in respect of an anonymous telefax Chua had written to various town councils concerning the quality of BMB's work.

The background facts

2 BMB is a company incorporated in Singapore and engaged principally in renovation works. It has carried out renovation, repair and painting works for various town councils in Singapore. On 7 August 2007, it was awarded a contract ("the Contract") by the Management Corporation Strata Title Plan No 2622 ("the MCST") of a condominium at Boon Lay Drive known as Summerdale Condominium ("Summerdale") to carry out repair and repainting works. Summerdale comprises various buildings including four residential buildings referred to as Blocks 2, 6, 8 and 10. Chua is a subsidiary proprietor and resident of Summerdale. The managing agent of Summerdale at all material times was simply referred to as Melana International. The staff there included Norman Senin and Kenneth Leong.

3 BMB's obligations under the Contract were, *inter alia*, to jet wash and repaint the walls of the condominium blocks in Summerdale, as well as to repaint external and internal metal surfaces such as staircase railings. For this latter item, BMB was required to remove existing rust on metal surfaces before repainting them.

4 The project manager for the Contract was a company named Bruce James Building Surveyors Pte Ltd ("Bruce James") whose responsibility was to supervise BMB's work and to ensure that it carried out the repair and repainting works in accordance with the terms and specifications of the Contract. Bruce James would issue interim payment certificates to BMB after receipt of BMB's claims for progress payments. The MCST was then supposed to make progress payments to BMB.

5 Aside from Bruce James, the MCST also engaged another company named Conspec Pte Ltd ("Conspec") to ensure that BMB's works were carried out in accordance with specifications. To this end, Conspec deployed various persons from time to time as clerks-of-works.

6 BMB carried out its works at Summerdale from September 2007. On 14 May 2008, Bruce James wrote to say that provisional completion was achieved on 15 April 2008 except for part of Block 2 where repainting was incomplete because of a lack of access for the use of gondolas on the high rise walls of that block. [note: 1] During this period, there were complaints from several residents, including Chua, about instances of poor workmanship. These complaints were aired at the MCST's seventh Annual General Meeting held on 20 April 2008.

7 In the meantime, Bruce James had certified payment of $472,143.42 to BMB for five progress claims. There was also a sixth progress claim by BMB dated 19 March 2008 for $146,172.78. Bruce James' interim payment certificate dated 10 April 2008 for this claim was $46,915.92, excluding GST. The MCST did not initially pay this sum.

8 On 10 July 2008, a site meeting was held and was attended by representatives from Melana International, BMB and Bruce James. According to the minutes thereof, one Teow Chwee Tee ("Teow"), who was the clerk-of-works then, was also present. Teow informed the meeting that 30% of defective metal railings had been completed and 50% was still not rectified. Terence Low, the representative from BMB, replied that these defects would be rectified by 15 July 2008. However, they were not. In the meantime, the MCST continued to withhold payment to BMB on the interim payment certificate for BMB's sixth progress claim.

9 On 19 July 2008, BMB wrote to the MCST demanding payment on that payment certificate and informed the MCST of its intention to terminate the Contract if payment was not made within seven days.

10 On 22 July 2008, the MCST held a meeting with Teow and representatives from Melana International and Bruce James. It was clarified at that meeting that the MCST did not intend to deliberately withhold payment to BMB, but that any payment had to be justified based on the quality of work done. In this regard, the chairman of the MCST expressed his dissatisfaction that Bruce James seemed to be certifying BMB's progress claims based solely on a specified percentage of work done without verifying the actual quality of the work rendered. Teow also informed the meeting that the list of existing defects in relation to the completed work numbered about 20 pages. Outstanding defective work was 75%.

11 In the meantime, BMB made a seventh progress claim dated 10 May 2008 for $260,219.04. On 4 August 2008, Bruce James issued a seventh interim payment certificate for $6,573.74 excluding GST. The MCST also did not make any payment on this certificate.

12 On 4 September 2008, BMB wrote to the MCST terminating the Contract and demanding all outstanding payments due to it. This included amounts certified under the sixth and seventh interim payment certificates, cost of delay, late interest payments and other losses incurred by BMB.

13 Apparently, Knight Frank Estate Management Pte Ltd ("Knight Frank") was appointed as the new managing agent of Summerdale around that time. Knight Frank wrote to BMB on 13 September 2008 to say that the MCST had issued two cheques for $46,915.92 and $6,573.74 to pay the sums certified under the sixth and seventh interim payment certificates, excluding GST. A meeting was also sought to resolve outstanding issues. Unfortunately, there was no resolution of outstanding issues and it was not made clear to me as to whether the two proposed payments were in fact made. It is not in dispute that BMB left the site although it is not clear when they actually did so.

14 Around this time, the MCST also became embroiled in a separate dispute with Bruce James as it had refused to pay an outstanding part of the latter's project management fees on the ground that

Bruce James had failed in its duties as the project manager in relation to the Contract. The dispute between the MCST and Bruce James was the subject of separate legal proceedings which have since been settled.

15 To prepare for its ongoing disputes with BMB, and perhaps with Bruce James as well, the MCST engaged a building surveyor, Faithful+Gould Pte Ltd ("FG"), sometime in early 2009 to inspect the works undertaken by BMB at Summerdale. The inspection was carried out in March 2009 and FG's report, which was dated July 2009, noted, *inter alia*, that the external painting of metal surfaces was extremely poor and not in accordance with the Contract specifications.

Chua's anonymous telefax dated 10 March 2009

16 On 10 March 2009, an anonymous telefax was sent to various town councils in Singapore criticising BMB's poor workmanship in relation to the works at Summerdale. It states as follows:

> I am one of the residents of a condo in Boon Lay named Summerdale. We started repainting our condo in 3rd quarter 2007. Our management then engaged a company named: "BM Buildings Pte Ltd" with office in Tagore Lane to carry out the repainting jobs.
>
> I heard that prior to awarding the job to BM Building one council member did spoken to a property officer of a town council located in Jurong West st 51 Blk 509. According to that officer (a lady) from the town council she mentioned that they had not use BM Building before but she had "had received no adverse remarks from other town councils whom had used BM building services before". The repainting jobs, which costs over $760,000 was awarded to BM Building subsequently.
>
> After few months into the jobs, several residents had complaint of their bad workmanships. Few residents had personally witnessed that this contractors had not carry out the work according to good practice and specifications. Some of their practices were briefly listed as follow:
>
> 1) Their workers do not remove and wire-brush rusty metal railing before painting. In fact they don't even clean the surface where the dust and dirt were so thick. This had caused many metal railings start to get rusty now, less than a year after they were painted but their works are supposed to have a six year warranty.
>
> 2) Their workers do not properly cover the ground before painting the high rise walls above it. This result in so many paint stain marks everywhere that even until today most of these paint stain were still visible.
>
> 3) They also did not properly jet-wash the walls before painting. In fact for internal walls they don't even clean it at all. They simply paint over thick dust and dirt. This had resulted in those "water mark" below window start to visible from behind the new coat of paint. I had proven to the clerk of work that these stain watermark were from old stain before the repainting start. Did they properly wash it?? Did they applied the correct type of under-coat?? If yes shouldn't the under-coat able to cover up the old stains??
>
> After finished painting 3 out of 4 blocks they stop work due to some dispute, collected more than $500,000/- and leave all the defects, rusty metal railing and unsightly paint stains everywhere...
>
> I urge all town councilors to visit Summerdale in Boon Lay and see for yourself the sorry state of the first 3 blocks with all the painting defects.

I shall refer to the above statements from the third paragraph starting with "After few months..." to the end of the telefax collectively as "the Published Words".

17 The telefax was quite easily traced to Chua who did not deny that he was the author of the same.

The meaning of the Published Words

18 BMB pleaded the meaning of the Published Words as follows in its statement of claim:

> 9. In their natural and ordinary meaning, the above Published Words meant and were understood to mean that:-
>
> i. the Plaintiffs had carried out the contractual works in the Project in the most irresponsible and dishonest manners in that the contractual works were carried out in the most un-workmanlike manner and not in accordance to specifications and industrial practice; and
>
> ii the Plaintiffs are an irresponsible contractor who after collecting payments of not less than $500,000.00 totally abandoned the Project and left the defective works undone.
>
> 10. Further, by way of innuendo, the above Published Words and by writing to and inviting all the Town Council's Councillors to visit the site to see "*the sorry state of the first 3 blocks with all the painting defects*" meant and were understood to mean that the Plaintiffs were an untrustworthy contractor and that the Town Councils should be cautious in selecting the Plaintiffs as their contractors and to take cognizance of the poor works carried out by the Plaintiffs at the Project.
>
> [emphasis in original]

19 While Chua's Defence disputed the meaning pleaded by BMB, it did not say what the Published Words mean. Even in the closing submission for Chua, his counsel Mr Victor Yip did not say what the Published Words mean. Instead, Mr Yip sought to explain why Chua had sent the telefax.

20 I am of the view that, in context, the first two sentences of the first paragraph of the Published Words mean that BMB did not carry out the works in Summerdale properly. The three sub-paragraphs (1), (2) and (3) thereafter are self-explanatory and were aspects of the general allegation of failure to carry out work properly.

21 The first sentence of the penultimate paragraph of the Published Words suggested that BMB was acting irresponsibly in stopping work because of a dispute when the state of the works was poor and unsightly.

22 The first two sentences of the first paragraph of the Published Words and the following three sub-paragraphs are defamatory of BMB. So is the first sentence of the penultimate paragraph.

23 I am also of the view that the last paragraph of the Published Words does not add any higher defamatory meaning although the reference to the "sorry state of the first 3 blocks with all the painting defects" is also defamatory.

24 In my view, there is no suggestion of dishonesty in any of the Published Words.

The defences

25 Chua relied on the defences of justification and fair comment.

The witnesses

26 The witnesses for BMB were:

(a) Low Sam Chee, also known as Terence Low ("Terence Low"). He was BMB's project manager for the Contract.

(b) Oh Sze Jack, also known as Jack Oh ("Jack Oh"). He is BMB's general manager. At all material times, he was its assistant manager prior to his appointment as general manager.

(c) Nicholas Mike Moossa ("Nicholas Moossa"). He is an associate director of Building System and Diagnostics Pte Ltd which was engaged to give a report on any additional defects raised by the MCST.

(d) Teng Yew Heng ("Y H Teng"). He is a manager of Kansai Paint (Singapore) Pte Ltd ("Kansai").

(e) Loggie Bruce Jamieson ("Jamieson"). He is a director of Bruce James.

27 The witnesses for Chua were:

(a) Chua himself.

(b) Ralph William Davidson ("Davidson"). He is a building surveyor and project manager with FG. He inspected the site and issued the report of FG referred to above.

(c) Yeo Beng Cheong ("Yeo"). He was a clerk-of-works employed by Conspec. He attended at the site from October or November 2007 to April or May 2008. His predecessor was a person by the name of Raymond and his successor was Teow (see [6] above).

(d) Ang Hiong Kiat ("Ang"). He is a subsidiary proprietor and resident of Summerdale. He is also a member of the council of the MCST since April 2008.

(e) P Raza ("Raza"). He is a subsidiary proprietor and resident of Summerdale. He was a member of the council of the MCST in 2003 and then left the council. He again became a member of the council in April 2008 and was appointed Vice-Chairman of the council.

(f) Mdm Tjta Ner, also known as Susan ("Susan"). She is a subsidiary proprietor and resident of Summerdale. She was a council member in 2007 and 2008.

28 The trial was on the issue of liability only. The evidence of Y H Teng was irrelevant as it was to show that Kansai had terminated a distributorship agreement with BMB after the anonymous telefax was sent.

29 The evidence of Nicholas Moossa was also irrelevant as it did not deal with the three specific aspects of defective work mentioned in the Published Words nor the state of the works when BMB terminated the Contract.

30 The evidence of Jack Oh was limited in value as he was more involved in administration and was not at the site daily. It is not even clear how much attention he paid to the actual work on site.

Justification - the three aspects of failure to carry out work properly

Rusty metal railings

31 The thrust of the complaint about rusty metal railings was that BMB had not removed existing rust from the surface of the railings before painting as was required under the contract specifications. Wire-brushing was one of the possible methods of removal.

32 The Breakdown of Tender Sum for Main Contract contained technical specifications. Item 3.19 related to external repainting to woodwork and metalwork. The material part of item 3.19 stipulates:

> Prepare by mechanical or chemical means by scrapping, sanding/rubbing down and removing all existing flaking/loose/peeling/defective paintwork to all existing previously coated wood and metalwork surfaces to a sound and clean base, ensuring that all timber rot and corrosion to metalwork is fully removed to a sound substrate and replaced (if and as necessary) and/or treated by spot priming ready to receive new paint.

33 A similar specification was provided in item 3.22 for internal repainting to woodwork and metal surfaces.

34 BMB sought to refute the Published Words in respect of rusty metal railings in various ways.

35 Terence Low alleged that some of the photographs taken by Chua to illustrate rusty metal railings were not applicable because it had not even started work thereon.

36 As for other railings which it had done work on, BMB gave various reasons, for example, (a) that work on the railings had to be stopped temporarily while other work, such as to rectify cracks on walls, was completed first or (b) some of the rust was caused by inclement weather.

37 BMB's position was that it had rectified the rusty metal railings to some extent and to the extent that they were not rectified, this was because it had terminated the contract before rectification was completed.

38 BMB also did not accept that all the rust was caused by poor workmanship. It suggested that some would be due to the weather over a period of time or outside interference like scratches caused by others in Summerdale. However, it was not disputed that if work had been carried out properly on

the metal railings, then the railings should last between three to five years before deterioration.

39 BMB also relied on a letter dated 12 March 2009 from Bruce James which was addressed to "Town Council". This was issued at BMB's request two days after the anonymous telefax was sent. The material part of the letter addressed all the three aspects of poor workmanship. It stated:

1) Rusty Railings

Generally, all preparation and repainting works were carried out in accordance with good industry practice.

A clerk of works was directly employed by the MCST upon which a defects list was submitted to BMB for rectification. Specifically in respect of 'rusty railings' minor areas were encapsulated within the list of defects.

2) Sheet coverage to the ground during paint operations

The sheet coverage/protection sheeting was provided in accordance with good industry practice and specifically protection sheets were provided over cars to eliminate possible splash marks.

3) Jet washing to walls

All jet washing was carried out in accordance with good industry practice.

As stated above, a clerk of works was directly employed by the MCST upon which all jet washing was approved to commence with the repainting works on site.

4) Paragraph 7 of the letter dated 10 March 2009

During the contract period of the Repairs and Repainting works, interim progress payments were certified and issued to the Clients for progress payments to be made in accordance with the progress of the works on site. However, the contract was subsequently terminated by BMB for non payment of the certified progress claim and certificate prior to completion of all the works on site.

Provision had also made been made to deduct the outstanding defects from the payment certificates based on the list of defects as prepared and issued by the clerk of works directly employed by the MCST.

40 BMB also sought to rely on the evidence from Yeo who was one of Chua's witnesses. As stated above, Yeo was a clerk-of-works employed by Cospec for the work in question. He was at the site daily on weekdays from 8.00am to 5.00pm between October/November 2007 to April/May 2008.

41 Yeo had completed and signed site daily reports in which there was a section E for him to insert comments about defective work. No comment was inserted in section E to complain about poor workmanship. BMB sought to rely on this omission to avoid any allegation of poor workmanship. On the other hand, Yeo clarified that he never inserted any comments in section E as he used the site daily reports to report only on work being undertaken but not on the quality of the work. There were also various defects lists issued by Yeo.

42 It is clear to me that the site daily reports did not in themselves rule out poor workmanship.

43 There were also various Requests for Inspection ("Requests") from BMB signed by Yeo. The Requests listed out various stages of work which were supposedly verified by Yeo. BMB sought to rely on the Requests to show that Yeo had checked every stage of the entire work at every location and that the workers would proceed to the next stage only after Yeo gave the go-ahead to do so. However, again, the fact that Yeo had issued defects lists demonstrated that Yeo's checking and signing of the Requests did not rule out poor workmanship.

44 Moreover, Yeo himself emphasized that it was not possible for him to check every piece of work at every location in the site. He had done random checks only. [note: 2]

45 Indeed, it is clear to me that even the defects lists did not necessarily identify every instance of poor workmanship but only those which Yeo noticed or were brought to his attention. If, for example, rust from a metal railing had not been properly removed before applying the first coat of paint and then it was painted over before Yeo reached the scene, he would not be aware of the true picture.

46 While Yeo did apparently agree, during cross-examination, with the views expressed by Bruce James in its letter dated 12 March 2009, it seemed to me from his evidence during re-examination that he had read that letter to mean that the various works ought to be carried out in accordance with good industry practice and not that they were in fact carried out in accordance with such a practice. [note: 3]

47 Chua relied on various evidence to justify his contention about the rusty metal railings.

48 First, he alleged that there were in fact many rusty metal railings in Summerdale after BMB purportedly completed their work. This allegation was supported to some extent by photographs which he relied on, for example, photographs at pp 31 and 32 of his affidavit of evidence-in-chief ("AEIC").

49 He said that he himself had seen the workmen failing to adequately remove rust on metal railings. This was supported by email he had sent to Melana International. For example, in an email dated 7 October 2007, he said:

> ...
>
> Last 2 week i saw your workers was washing the basement carpark with water jet. My car was park on upper deck so i don't bother. Late in the evening i than realised that my car was covered with white spots of paints and ashes all over. There were nobody around so i just spend the next hour washing the car myself. I wonder what sort of precaution your contractor had taken and what the clerk of work is doing while such a washing was done.
>
> I had witnessed at least twice that your man just simply paint over a rusty railing without first treating the rusty metal. I called and inform Mr. Norman who assure me that the clerk of work had inspected before they paint. But for the 2 occasions that i had witnessed i did not see your clerk of work around.
>
> I also realised last week that when the workers are painting the wall of the blocks they did not jet wash first. Also i did not see clerk of work supervising the painting.
>
> May i know is the clerk of work suppose to work for summerdale? Or is he suppose to work for the

contractor??

Is rusty railing suppose to be treated first, inspected and certified by the clerk of work first before repaint??

Is dirty walls, some with algae need to be thoroughly washed first and the clerk of work certify clean before a new coat of paint can be applied??

50 Chua also orally elaborated as to how BMB's workers purported to scrape rust from metal railings on the ledge of each unit which was used for placing air-conditioning condensers. On the ledge, there were horizontal metal railings as a sort of parapet wall. He said that the workers would tie a scraper to a pole and run the pole along the length of each railing one after the other casually without actually trying to ensure that the rust was adequately removed. He had seen this as they were doing the work at different floors at Block 8 where his unit was.

51 Ang said that he saw that the workers simply painted the railings at the air-conditioning ledge for his unit without first removing the rust thereon. [note: 4]

52 Raza said that he saw workers simply painting over the rust of metal railings in the external common areas. When he asked them why they had not removed the rust first, they told him that they were using a very high quality epoxy paint undercoat. [note: 5]

53 Susan said that she saw workers painting external metal railings without removing the rust first. The rust at a particular part of staircase 1 of Block 2 was particularly bad. She had sent an email dated 27 April 2008 to council members. The material part stated:

These are the questions I would like to pose to BJ:

1) I had strongly opposed payment to BM because of the extreme shoddy work done during the very first phase .... Block 2 but was told that MCST has to abide because BJ had approved the work completed for that period. Why did he give his stamp of approval when it is so evident that this kind of work would not even be approved by an auntie like me.

a) no washing before painting

b) plants killed at Block 2

c) lightings stained with paint

d) shaky metal railing at staircase 1 not welded

e) staircase 1 metal railing ... rust not scrapped, not cleaned, no primer but peach paint painted over. Even brought Bruce to take a look at it himself with Sanyi. This was last year and when I checked again yesterday, the metal railing is still in the same condition.

54 Susan's attention was drawn to a site daily report dated 22 March 2008 (in p 320 of the Plaintiff's Supplementary Bundle of Documents). This report suggested that work was in progress to rectify a hand railing at Block 2 in the area she had identified. It was not clear to me whether this report was referring to the same location she had specifically mentioned. In any event, she maintained her evidence that that railing had still not been rectified and she refused to accept the accuracy of that report even if it pertained to the same location.

55 Chua also relied on the evidence of Yeo, the clerk-of-works. In his AEIC, Yeo said:

> 3. Many of the defects include poor quality works on the internal and external metalwork. Many of the metalwork surface rusts and dirt were not removed and were simply painted over. This had resulted in uneven finish and rough surfaces.
>
> 4. I noticed that the contractor did not sufficiently placed protective cover at the car park, driveway, walkway and other common area when they were painting. Despite my informing the contractor's workers to place protective covering on the ground where the painting was being carried out, they had failed to do so. As a result of which, paint stains can be seen at many locations at Summerdale Condominium. Sometimes, the contractor's workers did not properly wash the walls before painting. The contractor's workers at times did not properly apply undercoat before the finished coat as required.
>
> 5. I had reported that many of the common area of Summerdale Condominium were poorly painted. This was because my instructions to the workers were not properly followed. For instance the contract require the contractor to proceed with the works stage by stage. At every stage of work the contractor need to obtain clearance/approval from the clerk of works before they can proceed with the next stage of work. However, this was not always followed. There were many instances the contractor's workers just proceeded with the next stage of works without first obtaining my approval. I had brought this to the attention of the contractor's manager. Apparently this was not communicated to the workers who continued to proceed with painting the next stage of work without first obtaining my approval. Many of the defects that I had reported were not rectified as at June 2008. Annexed hereto and shown to me marked "YBC-2" is a copy of the list of defects for the period April 2008 to June 2008.
>
> 6. During the course of my deployment at Summerdale Condominium as clerk of works, I had received many complaints from residents regarding the poor quality of the contractor's works. For instance sometime in January 2008, Mr Chua Thiam Siew had peeled off a small piece of paintwork from a section of a metal railing surface to show to me that the contractor had not painted an undercoat prior to painting the finishing coat on this particular section of metal railing.

56 While Yeo was willing to agree during cross-examination that defective work had been rectified from time to time, he also remembered that there were still lists of outstanding defects. At the time of provisional completion, there were 22 pages of defects. Some were then rectified. Others not. Some of the remaining defects pertained to rough metal surfaces for which the remedial action required by the clerk-of-works was to spot grind and repaint. [note: 6] Although Jack Oh said that the comments about the remedial work under the column entitled "Remedy Action Taken" meant that the remedial action had been undertaken, I do not accept his evidence. The clerk-of-works had not signed to verify that the remedial action had been done as in other instances. [note: 7] Furthermore, no clerk-of-works corroborated what Jack Oh said.

57 In any event, Chua also relied on a report prepared by FG in July 2009. The report had been commissioned not by Chua but by the MCST as I mentioned above. The inspection by FG was carried out in March 2009. Para 4.02 of the report stated:

> 4.02 Quality of Paint Workmanship
>
> One key issue which the client (MCST No. 2622) requested that Faithful+Gould take particular note and review, was the quality of the paint workmanship and the number of

layers applied. Faithful+Gould noted the following key issues with regards to the painting works.

- ...

- The external painting of metalworks (Item 3.19) was found to be extremely poor and non compliant with the contract. From our inspection we found that the metal surfaces had not been appropriately prepared as correctly described within the contract documentation and merely painted over with what appears to be a single coat. This has resulted in an uneven finish due to rusting metal works in a large number of locations particularly to hand rails, and uneven paint work where loose/flaking and blistering paintwork has not been removed prior to painting by the contractor. This requires to be completed taken back to bare metal and repainted to prevent further deterioration of the metalwork surfaces exposed and suffering from corrosion.

58 Page 14 of Appendix A (of the report) on the Scope of Work Audit Schedule elaborated on the external metal work as follows:

Metal Surfaces:

All metal surfaces have been painted however this appears to be one coat with no preparation of the surfaces as a result large amounts of paintwork are peeling and sections of rusting breaking through the paintwork and areas of rust which have been painted over. This requires to be wire brushed back to remove rust, treated with inhibitor, primed with etching primer and repainted.

59 The recommended rectification works required was:

Wire brush back all metal surfaces to remove rust, treat with inhibitor, prime and repaint.

60 In addition, FG assessed the percentage of the work properly completed for external timberwork and metalwork to be 30%.

61 As for internal metalwork, p 15 of Appendix A observed that the metal railings were not properly prepared prior to painting and were "to be wire brushed and repainted, over paint of rush [*sic*] and peeling paintwork was found throughout the stairwells". FG assessed the percentage of the work properly completed for internal woodwork and metalwork to be 40%.

62 Although Davidson agreed that in principle there could be various reasons for the rust, he did not vary or qualify the FG report during his cross-examination.

63 Also, although Davidson agreed that a test would better determine whether the paint used on every part of the metalwork was the same as that used by BMB, that was a different point. It was relating to BMB's allegation that it had not even started work for some of the metal railings.

64 I would add that as at the time of the trial, the MCST had not called upon any new contractor to rectify the defective paintwork on the metal railings.

65 Was it correct that BMB had not even started work on some of the metal railings as it had suggested? I should first clarify that although part of the painting work on the walls of Block 2 was not completed because BMB was not given gondola access to do that work, that has nothing to do with the question whether rust removal and painting work had been done on the metal railings.

66 Chua pointed out that BMB had made its sixth and seventh progress claims on the basis that it had completed 100% of the work for metal railings. When this was pointed out by Chua during his cross-examination, counsel for BMB Mr Lee Mun Hooi suggested that the following had transpired. The tender sum for work for the metal railings was $6,000. When BMB submitted its progress claims, it had claimed $2,400 for 100% of the work done. Mr Lee suggested that the $2,400 figure was to reflect the fact that work had been done only on some of the metal railings, even though 100% of $2,400 was being claimed by BMB. Mr Lee also suggested that the fact that Bruce James had certified only 60% for the work done on the metal railings supported BMB's contention that work had not been done on some of the metal railings.

67 I do not accept such suggestions or BMB's allegation that it had not even started work on some of the metal railings.

68 The fact that Bruce James had certified only 60% for work done for the metal railings did not in itself mean that work had not begun for the balance. It could also mean that BMB had done 100% of the work but Bruce James was certifying only 60% for the *value* of the work done because of poor workmanship.

69 Also, the $2,400 sum which BMB had stated in its progress claims could have been a reduction, after negotiation, or a mistake. If there was a mistake, the mistake might have been on the "$2,400" figure and not on the "100%" figure.

70 The point is that there was no evidence to support Mr Lee's suggestions. I reminded him about this in the trial but he carefully avoided making any application to recall Terence Low or Jamieson to give evidence to substantiate his suggestions.

71 Secondly, BMB must have records showing which metal railings had been done and for which work had not begun, if indeed the work for some had not begun. Yet no such records were produced. How then was Terence Low able to say that work had not begun for certain rusty metal railings shown in some photographs other than a wish to avoid liability for them?

72 Thirdly, BMB had itself claimed in its letter dated 16 April 2008 that it had provisionally completed Blocks 6, 8 and 10 on 15 April 2008. [note: 8] In turn, Bruce James had certified that the overall works for the whole project (excluding part of Block 2) had been provisionally completed on 15 April 2008 (see [6]). BMB would not have claimed provisional completion nor would Bruce James have confirmed such completion if BMB had not even begun work on 40% of the metal railings.

73 I find that Terence Low was lying when he alleged that work had not begun for some of the metal railings. It was a desperate attempt to avoid responsibility. Work on the metal railings was in fact purportedly completed by BMB.

74 I am also of the view that it is irrelevant whether there was some delay in completing the painting of some metal railings and whether poor weather had affected some of them before they were completed. If work thereon was eventually completed (although defective) as I find to be the case, then it was for BMB to ensure that the work was properly carried out in any event. It seems to be that reasons about delay and inclement weather were distractions to avoid liability.

75 It cannot be disputed that there were defects. Some were noticed and recorded in the defects lists. Of course not all the defects noted related to rusty metal railings and not all the rusty metal railings were necessarily due to the failure to remove existing rust from metal surfaces. However, FG's report observed that there was wide-spread failure to remove existing rust. Significantly, BMB did not

adduce evidence from an independent expert about the rusty metal railings. I accept FG's observation.

76 I also accept Chua's evidence as to his observation as to how BMB's workers purported to remove rust from the metal railings. At best it was done casually and not properly or in accordance with the specifications.

77 Of the three other residents who were witnesses, Ang's demeanour and responses were not as steady as Raza's and Susan's. I am of the view that the evidence of the latter two corroborated Chua's evidence on this issue.

78 I do not place too much weight on Yeo's evidence which was ambivalent on pertinent points. As mentioned above, he alluded to defects. Then he agreed that they had been rectified but he also remembered that there were still defects lists and the defects were not completely rectified.

79 Furthermore, I noted that Yeo deferred to Chua. For example, when Yeo's attention was brought to Chua's allegation in the anonymous telefax about the rusty metal railings and the omission to scrape off the rust, Yeo's reaction was that Chua must have seen this for himself. [note: 9]

80 As for rectification works, I would first say that it is unlikely that BMB went back to basics and actually checked whether rust was properly removed. There is no evidence that it became more thorough when it was doing rectification works. More likely than not, its workers simply painted over any rusty areas to satisfy the clerk-of-works and Bruce James.

81 In this respect, I am of the view that Bruce James took a rather passive attitude. It may well be that its representatives were on site about twice a week as Jamieson said, but even then they could have taken more interest in the state of the works. It seems to me that they relied heavily on the clerk-of-works and the clerk-of-works unfortunately also did not discharge his duty well. As it was, residents and/or subsidiary proprietors were not happy generally with BMB and also Bruce James. Indeed, apparently, the MCST held back payment of some fees of Bruce James which led to a suit by Bruce James for the same, as mentioned in [14] above. Fortunately, that suit has been resolved by settlement.

82 Mr Lee suggested that because the terms of settlement of Bruce James' claim against the MCST provided for the MCST to pay Bruce James its claim for outstanding fees, this demonstrated that there was no basis in any allegation against Bruce James or against BMB in respect of defective work. I do not agree. Firstly, even if the MCST had thought that it did not have a valid claim against Bruce James, that did not necessarily mean that it did not have a valid claim against BMB for defective work. In any event, it was part of the settlement that the MCST had reserved its position against Bruce James in the event BMB commenced action against the MCST. Secondly, there are many possible reasons why the MCST might have settled with Bruce James, for example, that it was not worthwhile to fight over the $19,000 that Bruce James was claiming. Indeed, that was the explanation given by Raza which I accept. Mr Lee's reliance on that settlement was another distraction.

83 I do not give much weight to the letter dated 12 March 2009 from Bruce James which appeared to vindicate BMB from all the allegations of Chua. In my view, it was a self-serving letter. The evidence demonstrates that Chua was justified in complaining about BMB's failure to act according to good practice and specifications as regards the rusty metal railings.

84 I come now to BMB's allegations that it did not complete rectification works because it had

terminated the contract.

85 As I mentioned above, the quality of BMB's rectification work was doubtful. Also, the pace of such work was poor. That is why at the site meeting of 10 July 2008, (see [8] above), Teow stated that rectification of 50% of the metal railings defects was still outstanding.

86 Significantly, BMB and Terence Low also did not dispute that Terence Low had in that meeting given the assurance that the defects would be rectified by 15 July 2008. The defects were not rectified by 15 July 2008. Instead, on 19 July 2008, BMB warned the MCST of its intention to terminate the contract if it did not receive full payment on the interim payment certificate for its sixth progress claim. This was not even the termination notice which was given later on 4 September 2008.

87 Indeed, Chua pointed out during cross-examination that he observed from the site daily reports that no worker of BMB came to the site to do rectification work between 11 and 19 July 2008. He was not challenged on this observation.

88 It seems to me that BMB had overlooked the assurance to complete rectification work by 15 July 2008. Hence, it sought to justify its omission to complete rectification work on the subsequent termination of the Contract.

89 For completeness, I should mention that some correspondence in the Defendant's Bundle of Documents came to my attention. In a letter dated 14 July 2008, Terence Low said that Teow had informed the meeting of 10 July 2008 that one Michael Ho, who was a member of the council of the MCST, had instructed Teow on 9 July 2008 to stop BMB's workers from entering the site. However, Terence Low did not assert this in the trial. Neither did he refer to the 14 July 2008 letter during his evidence. Indeed, there was a reply also dated 14 July 2008 from Jamieson stating that Bruce James had not received any written confirmation of the allegation and that BMB was required to complete the rectification of defects by 15 July 2008. [note: 10]

90 I am of the view that Chua was justified in alleging that BMB had stopped work due to some dispute. Although BMB might have received less than $500,000 when it left the site eventually, that was not the crux of Chua's complaint. Indeed, no issue was made of this in the course of the trial. The point was that BMB had left some defects, including rusty metal railings undone. I will come to the paint stains later.

91 In so far as there was some suggestion of irresponsibility on the part of BMB for leaving the site as it was, I am of the view that Chua was justified in making that suggestion. Whether BMB was entitled, technically, to terminate the Contract in the light of the MCST's then refusal to pay is another matter.

Paint stains

92 I come now to Chua's complaint about BMB's omission to cover the ground before painting the high rise walls resulting in many stain marks which were not removed.

93 Terence Low had written a letter on 28 August 2007 to the MCST to enclose a Pre-Condition Survey. It highlighted, *inter alia*, that paint stains had been found at various locations in the estate.

94 In addition, BMB relied on Bruce James' letter dated 12 March 2009 (see [39] above).

95 BMB also relied on Yeo's evidence that defective work, including rust and paint stains, had been

rectified. [note: 11]

96 Chua's evidence was that there were various locations in the estate with paint stains. His email dated 7 October 2007 to the managing agent (see [49] above) already mentioned how his car was covered with white spots of paint and ash.

97 He also referred to some photographs at pp 25 and 26 of his AEIC. The top one at p 26 showed many white paint stains on the roof of a covered walkway. Even Terence Low admitted that these were caused by BMB's workers. Another photograph at the bottom of the said p 26 showed white and peach paint stains on a floor of a common area.

98 Even if it was arguable whether the white paint stains were caused by BMB's workers, Chua said that yellow/peach paint stains were clearly attributable to BMB's workers because that was a colour which they had been using.

99 Another photo at the bottom of p 25 of his AEIC showed paint stains but they appeared white in colour.

100 Ang said that he had seen paint stains on the roof of a covered walkway and on a walkway and on the first floor of his block (*ie*, Block 6) and at the lift lobby of the floor of his unit.

101 Raza said that initially when work was started on Block 2, adequate cover had been provided for paint stains but when the work moved to other blocks, the roofs of the covered walkways were not covered and the exposed driveways were not adequately covered. He had complained to the managing agent and to the clerk-of-works. The latter told him that he had difficulty controlling the workers. [note: 12]

102 As for the top photograph of p 31 of the Defendant's Bundle of Documents (which is the same as the top photograph of Chua's AEIC p 26), Raza said that there was worse staining on a covered walkway at his block, *ie*, Block 6. He also attributed peach and yellow colours to the colour of the paint that BMB was using. [note: 13]

103 Susan said that she did not notice paint stains on the ground when she first moved into her unit. After BMB started work, she noticed paint stains around the estate which were peach/yellow in colour. [note: 14]

104 Yeo's AEIC mentioned paint stains at many locations (see [55] above). Although he agreed during cross-examination that defective work generally had been rectified, there was still outstanding unrectified work in the defects lists as I have mentioned. The defects lists at pp 36 to 39 of Chua's AEIC referred to various paint stains to be removed which remained unrectified as the clerk of works had not signed off to verify that rectification had been done.

105 I do not place much weight on the self-serving letter dated 12 March 2009 from Bruce James stating that sheet cover was provided in accordance with good industry practice. Chua's evidence about paint stains caused by BMB workers was steady. So was the evidence of Raza and Susan. In addition, Yeo's evidence was that as a result of BMB's work, there were paint stains at many locations. The fact that there were some paint stains even before BMB had started work at the site did not absolve BMB from paint stains from its work. I accept that there were paint stains on the ground or on objects at various locations caused by inadequate protection provided by BMB workers. There were also paint stains on the roofs of some walkways which were not noticed by the clerk-of-

works.

106 The remaining question on paint stains was whether those caused by BMB's work had been removed. I do not accept that all of such paint stains had been removed.

107 In my view, Chua was justified in making his complaint about the paint stains in his anonymous telefax.

108 Although the minutes of the site meeting of 10 July 2008 do not expressly refer to paint stains to be removed, the defects lists do.

109 I am of the view that Chua was also justified in suggesting that BMB was irresponsible to leave the site with unsightly rust and paint stains just because they were not paid relatively small sums certified to be due and payable to them.

Omission to jet-wash walls

110 I move on to the complaint about the omission to jet-wash or clean walls before painting.

111 BMB relied on Bruce James' letter dated 12 March 2009 (see [39] above) to contend that it had properly jet-washed the exterior of the buildings in the estate. It is not disputed that only the external walls were to be jet-washed. However, the internal walls were still supposed to be cleaned before painting.

112 BMB also relied on the Requests to argue that the clerk-of-works had checked each stage of the work before BMB proceeded with the next stage.

113 Terence Low's evidence was that all the external walls had been jet-washed and the internal walls cleaned before painting.

114 Chua's position was that BMB did not jet-wash all the external walls before painting. Nor did it clean all the internal walls before painting. Again, Chua's email dated 7 October 2007 (cited at [49] above) had already mentioned BMB's omission to jet-wash. Although the body of Chua's AEIC did not specifically refer to either of these omissions, an exhibit at p 22 did. The top photo was of a beam which was partially painted. It showed dust on the beam even though painting had already started.

115 There were also two photos in p 21 on internal walls. The top one was to show dust and stains around a lift landing area. The bottom photo was to show a worker painting without any water or cleaning equipment with him.

116 Susan's evidence was also that BMB did not wash all the walls prior to painting. Her email dated 27 April 2008 (cited at [53] above) already mentioned the omission to wash before painting. She had received many complaints from residents about the omission to jet-wash. She had in turn complained to Bruce James and to Yeo about this. [note: 15]

117 She gave two specific examples of omission to jet-wash the wall. One was in respect of a location in Block 2 behind the toilet in her unit. She said the managing agent stopped painting work as the wall had not been washed. [note: 16]

118 The other location was at a wall in Block 8. One day, a resident complained to her about the omission to jet-wash. Susan then went to see the managing agent to raise the issue. The managing

agent was surprised as the wall was not scheduled to be painted yet. When the managing agent approached the workers and asked them why they were painting the wall ahead of schedule and without washing, the workers responded with vulgarities. She said she believed that the wall was not washed because the windows and the ground were still all dry. [note: 17]

119 Although Susan was referred to some Requests to demonstrate that the walls in question had in fact been jet-washed, she did not retract or qualify her evidence.

120 As regards Chua's photo at the top of p 22 of his AEIC (see [114] above), Yeo said he must have overlooked the dust. To me, this was another instance when Yeo deferred to Chua. It is significant that at no time did Yeo consider Chua to be an unreasonable person or someone who exaggerated his complaints.

121 Again, I do not place much weight on the self-serving letter dated 12 March 2009 from Bruce James that jet washing was carried out in accordance with good practice.

122 As for the Requests, although they did appear on the face of them to suggest that the clerk-of-works had checked each stage of the work before BMB proceeded with the next stage, Yeo's AEIC said the opposite. It will be remembered that he said at para 4 of his AEIC, "Sometimes, the contractor's workers did not properly wash the walls before painting". At para 5 of his AEIC, he said that "There were many instances the contractor's workers just proceeded with the next stage of works without first obtaining my approval". He did not retract such evidence.

123 I accept the evidence of Chua and Susan. I am of the view that there were occasions when the external walls were not jet-washed prior to painting. As for the internal walls, the evidence for Chua was rather scanty and I am not able to say that his complaint about the same was justified. Nevertheless, in the context of the totality of his complaint about poor workmanship generally, I find that he was justified in that complaint.

124 The three aspects of poor workmanship were not isolated or minor instances which might be reasonably expected in any work of this nature.

Fair Comment

125 In *Chen Cheng v Central Christian Church* [1998] 3 SLR(R) 236 ("*Chen Cheng*"), the Court of Appeal held that, to succeed in the defence of fair comment, a defendant must prove the following elements:

(a) the words complained of were comments and not assertions of fact;

(b) the comment was on a matter of public interest;

(c) the comment was based on facts; and

(d) the comment was one which a fair-minded person could honestly make on the facts.

126 The question whether the Published Words are assertions of fact or are comments is not an easy one. As was stated in *Chen Cheng* at [35], much depends on how the statements are expressed, the context and the content of the entire telefax.

127 In *Hytech Builders Pte Lte v Goh Teng Poh Karen* [2008] 3 SLR(R) 236, the High Court concluded that the words "on the verge of collapse" were not comment and would be considered by an ordinary reasonable reader as an assertion of fact.

128 I am of the view that an ordinary reasonable reader would have taken the Published Words to be assertions of fact. That is why Chua was asking the addressees to come to Summerdale to see for themselves what he was asserting.

129 In addition, I am of the view that it is a stretch to say that because BMB do work for town councils and because town councils are responsible for the maintenance of public housing estates, the Published Words were on a matter of public interest. The Published Words were not about how town councils were carrying out their duties but were about the quality of work of a private contractor who is from time to time engaged by town councils to do work.

130 I am of the view that the defence of fair comment fails for the above reasons.

131 The above conclusion makes it unnecessary to consider the question of malice raised by BMB. Nevertheless, I will, for completeness, address BMB's allegation that Chua had acted with malice when he sent the anonymous telefax. I am of the view that he did not act with malice. He was a subsidiary proprietor/resident who was frustrated at the poor work carried out by BMB and what he perceived to be their callous attitude and he acted upon that frustration, not realising the possible dire consequences he might bring upon himself. It seems to me that he was not the only one frustrated with BMB's poor work.

132 The fact that Chua did not identify himself in the anonymous telefax as the sender did not necessarily mean that he was being malicious.

133 It is significant that after Chua had been served with the writ of summons, he wrote to Mr Lee on 5 August 2009 in a conciliatory tone. He apologised for some of the words he had used (in the anonymous telefax) although he maintained that the crux of the allegation about poor workmanship was true. He gave an assurance that he had no ill-intent against BMB and was open to any suggestion to help BMB provided he was not required to give false information. Unfortunately, there was no amicable resolution between BMB and him.

Summary

134 In the circumstances, Chua has succeeded in his defence of justification. I dismiss BMB's claim with costs to be taxed or agreed to be paid by BMB to Chua.

[note: 1] Defendant's Bundle of Documents ("DBD") p 19

[note: 2] Notes of Evidence ("NE") 16/9/2010 pp 13, 14, 32, 34-36, 105, 133

[note: 3] NE 16/9/2010 p 154

[note: 4] NE 20/10/2010 p 51

[note: 5] NE 21/10/2010 pp 49, 55, 63, 67

[note: 6] See DBD pp 38-41

[note: 7] See, eg, DBD p 24

[note: 8] Plaintiff's Bundle of Documents p 196

[note: 9] NE 16/9/2010 p 30

[note: 10] DBD pp 44-45

[note: 11] NE 16/9/2010 p 107

[note: 12] NE 21/10/10 pp 9-11

[note: 13] NE 21/10/10 pp 32 and 81

[note: 14] NE 21/10/10 pp 88-90

[note: 15] NE 21/10/10 pp 110-111

[note: 16] NE 21/10/10 p 92

[note: 17] NE 21/10/10 pp 96-98

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