IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 240

Suit No 65 of 2011

Between

Geocon Piling & Engineering Pte Ltd
(in compulsory liquidation) (undergoing
liquidation in CWU No 64 of 2006/R)

… *Plaintiff*

And

Multistar Holdings Limited (formerly
known as Multi-Con Systems Limited)

… *Defendant*

Consolidated with Suit No 500 of 2011

Between

Multistar Holdings Limited

… *Plaintiff*

And

Geocon Piling & Engineering Pte Ltd
(in compulsory liquidation)

… *Defendant*

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GROUNDS OF DECISION

[Building and Construction Law] — [Building and construction contracts] — [Lump sum contract]
[Building and Construction Law] — [Scope of works] — [Variations]
[Building and Construction Law] — [Subcontracts]
[Contract] — [Limitation Act]

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This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Geocon Piling & Engineering Pte Ltd (in compulsory liquidation)
v
Multistar Holdings Ltd (formerly known as Multi-Con Systems Ltd) and another suit

[2016] SGHC 240

High Court — Suit No 65 of 2011 consolidated with Suit No 500 of 2011
Vinodh Coomaraswamy J
24 – 28 February; 29 August; 1 September 2014; 16 January; 9, 30 May 2016

31 October 2016

Vinodh Coomaraswamy J:

Introduction

1 This dispute arises out of construction works carried out at a particular section of the Kallang-Paya Lebar Expressway ("the KPE") in 2004 and 2005. The defendant was the subcontractor for the bored piling works at that section of the KPE. The plaintiff was the sub-subcontractor for those works.

2 The plaintiff commenced this action against the defendant in 2011 to recover outstanding sums said to be due under their subcontract. I have granted the plaintiff's claims in part, finding that the sum of $4,343,569.35 remains due from the defendant to the plaintiff. The defendant has appealed against my decision. I now set out the grounds for my decision.

Factual background

The parties and their contractual relationship

3 The defendant in this suit is Multistar Holdings Limited ("Multistar"). Multistar is the parent company of a group of companies in the engineering and construction business.[1] Multistar was known as Multi-Con Systems Limited when it was incorporated. For that reason, it is referred to in some of the contemporaneous documentation in this matter as "Multicon". It changed its name to Multistar Holdings Limited in 2008.[2]

4 The plaintiff in this suit is Geocon Piling & Engineering Pte Ltd ("Geocon"). Geocon has been in compulsory liquidation since 2006.[3] At all material times, Geocon was a wholly-owned subsidiary of Multistar and was the specialist piling subcontractor in the Multistar group of companies.

5 Because of their parent/subsidiary relationship, both parties were controlled by common officers, at least until Geocon went into liquidation in 2006. These officers include one Tan Hang Meng ("Mr Tan") (the Managing Director of both companies) and one Chan Siew Hoong ("Mr Chan") (the Executive Director of both companies and Multistar's Executive Chairman). In addition, one Yip Mun Choon ("Mr Yip") and one Oh Chee Boon Benny ("Mr Benny Oh") managed Geocon and were employees of Multistar.[4]

6 In 2001, the Land Transport Authority awarded a contract known as C421 to Sembcorp Engineers and Constructors Pte Ltd ("Sembcorp").

1 DCS at paragraph 5; Tam Chee Chong's AEIC dated 14 January 2014 at paragraph 5.

2 SOC at paragraph 2; Tam Chee Chong's AEIC dated 14 January 2014 at paragraph 5.

3 SOC at paragraph 1; DCS at paragraph 4.

4 SOC at paragraph 4.

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Sembcorp's scope of work under C421 was to construct a part of the KPE from the East Coast Parkway ("ECP") to Nicoll Highway. Its scope of work included, but was not limited to, the bored piling at all locations along this section of the KPE.[5] These bored piling works included the processes of piling, pile-hacking, and debris removal.

7 In 2002,[6] Sembcorp subcontracted the entire scope of its bored piling works under C421 to Multistar ("the Sembcorp/Multistar subcontract"). The Sembcorp/Multistar subcontract was for a fixed lump sum of $27,479,313.00,[7] subject to variations.[8]

8 Later in 2002,[9] Multistar subcontracted its entire scope of work under the Sembcorp/Multistar subcontract to Geocon ("the Multistar/Geocon subcontract"). The Multistar/Geocon subcontract sum was agreed at a fixed lump sum of $26m but was made on the same terms as the Sembcorp/Multistar subcontract.[10] Therefore, it was also a lump sum contract subject to variations.

9 Geocon then subcontracted its entire scope of work under the Multistar/Geocon subcontract to Resource Piling Pte Ltd ("Resource Piling") ("the Geocon/Resource Piling subcontract"). The nominal value of the Geocon/Resource Piling subcontract was $18,710,510.84.[11] The difference of

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5 2AB 600.

6 2AB 601.

7 2AB 601; PCS at paragraph 4.

8 2AB 609 at paragraph 3.4; PCS at paragraph 4.

9 1DBOD 44 to 46.

10 1DBOD 44 to 45.

11 1DBOD 3; 1DBOD 46.

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$7,289,489.16 between the value of the Multistar/Geocon subcontract and the Geocon/Resource Piling subcontract represents Geocon's project management fees under the Multistar/Geocon subcontract.[12]

The flow of progress claims and payments

10 Given this chain of subcontracts, the flow of progress claims and payments under the last two subcontracts ought to have been between Multistar and Geocon on their subcontract, and between Geocon and Resource Piling on their subcontract. But Multistar and Resource Piling treated each other as direct contractual counterparties from the outset. They bypassed Geocon entirely. Resource Piling presented progress claims directly to Multistar, and Multistar made progress payments directly to Resource Piling.[13] As Multistar made each of these payments, Multistar would back charge that payment to Geocon and invoice Geocon for the work done by Resource Piling. Geocon would then recognise an indebtedness to Multistar in the amount of each such payment.[14]

11 From time to time, Geocon rendered its own progress claims to Multistar under the Multistar/Geocon subcontract. These progress claims included what were said to be Geocon's costs in performing the Multistar/Geocon subcontract. Geocon, of course, did not actually incur any actual direct costs in performing the Multistar/Geocon subcontract: it had subcontracted the entire works under the Multistar/Geocon subcontract to Resource Piling, and Multistar was paying these costs directly to Resource Piling on Geocon's behalf. The "costs" which Geocon claimed were therefore

12 1DBOD 46.

13 PCS at paragraph 234.

14 SOC at paragraph 26.

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incurred only in a notional sense. Geocon included these notional costs in its progress claims to Multistar purely to be in a position to set them off against its back charged indebtedness to Multistar, leaving Geocon in a position to claim its project management fees from Multistar.

The 2004 Litigation

12 Resource Piling's work did not proceed smoothly. It encountered difficulties at a location known as the "ECP South Location".[15] By October 2002, Resource Piling had stopped all work at the ECP South Location. Despite this, Resource Piling continued its work at other locations covered by the Geocon/Resource Piling subcontract during 2003 and into 2004. But by April 2004,[16] Resource Piling had ceased work at all locations under its subcontract.[17] Geocon ended up completing the works at the ECP South Location and at all the other locations under the Geocon/Resource Piling subcontract. I shall refer to the latter (*ie*, the works at all the other locations) as "the Balance Works".

13 Multistar commenced proceedings against Resource Piling in 2004.[18] Multistar's position at that time was that it was Multistar (and not Geocon) which was Resource Piling's contractual counterparty. Multistar alleged that Resource Piling had abandoned the bored piling works in repudiatory breach of this contract said to be between Multistar and Resource Piling.

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15 Certified Transcript dated 24 February 2014 at page 121; PCS at paragraph 34; SOC at paragraph 11.

16 SOC at paragraph 11; Defence at paragraph 11.

17 SOC at paragraph 11.

18 Tay J's judgment [2006] SGHC 134 at [5].

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14 Resource Piling responded by commencing a separate suit against Geocon and Multistar as co-defendants.[19] Resource Piling rejected Multistar's position, arguing that Resource Piling's contract was with Geocon and not Multistar. It sued Geocon for non-payment of progress claims and other breaches of contract.[20] Its case was that Geocon had failed to pay progress claims due to Resource Piling under the Geocon/Resource Piling subcontract and that this amounted to a repudiation of that contract.[21] Resource Piling asserted a contractual right to stop work at all locations and further asserted that Geocon was liable to it in damages. Resource Piling named Multistar as a co-defendant to this action, alleging that Multistar had undertaken to pay Geocon's debt to Resource Piling.[22]

15 All of this litigation was eventually consolidated and tried together before Tay Yong Kwang J (as he then was). I shall refer to this consolidated litigation as "the 2004 Litigation".

16 Resource Piling won the 2004 Litigation. Tay J held that Resource Piling's subcontract was with Geocon and not with Multistar. He found Geocon liable to Resource Piling to pay damages for breach of contract. He quantified those damages at $3.3m. In order to arrive at this figure, he quantified the value of work done by Resource Piling under the Geocon/Resource Piling subcontract as $13,744,417.03.[23]

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19 Tay J's judgment [2006] SGHC 134 at [5].

20 SOC at paragraph 13; DCS at paragraph 16.

21 Tay J's judgment [2006] SGHC 134 at [11(f)].

22 Tay J's judgment [2006] SGHC 134 at [5].

23 Tay J's judgment [2006] SGHC 134 at [12].

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A liquidator takes control of Geocon

17 Geocon was unable to pay Resource Piling the judgment debt arising out of the 2004 Litigation.[24] As a result, Resource Piling secured an order winding up Geocon on 30 June 2006.[25] One Tam Chee Chong ("the liquidator") was then appointed – and remains today – as Geocon's liquidator.[26]

18 The liquidator, as is his duty, has taken control of Geocon's accounting books and records. He reviewed these books and records with the assistance, where necessary, of one John Dudley Baker ("Mr Baker"). Mr Baker is the plaintiff's expert witness in this action and is a professional construction consultant and Chartered Quantity Surveyor with BK Burns Pte Ltd.[27]

19 The review showed that Geocon captured all costs which were ultimately referable to the Multistar/Geocon subcontract in two cost ledgers maintained in its computerised accounting books and records.[28] These two cost ledgers are known as GC 1063 and GC 1077. Broadly speaking, GC 1063 captures Geocon's costs incurred from the very outset of the Multistar/Geocon subcontract in January 2002 until the end of April 2004, when Resource Piling ceased work completely.[29] This includes the additional costs incurred by Multistar to complete the works abandoned by Resource Piling at the ECP

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24 DCS at paragraph 122.

25 SOC at paragraph 1.

26 SOC at paragraph 1.

27 Tam Chee Chong's AEIC dated 14 January 2014 at paragraph 21.

28 Certified Transcript dated 27 February 2014 at page 37, lines 17 to 24.

29 Lau Wei Koon's AEIC dated 13 January 2014 at paragraph 8.1; Ian Andrew Ness's AEIC at JDB-1, paragraph 37.

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South Location.[30] GC 1077 captures costs incurred from the beginning of May 2004, when Geocon took over the Balance Works, until the end of 2005.[31]

20 The liquidator's review showed that Geocon had not billed Multistar for all the work captured in GC 1063 and GC 1077.[32] It showed also that Multistar may have overcharged Geocon for the work done by Resource Piling.[33]

21 As a result of this review, the liquidator took the view that Multistar still owed Geocon money under their subcontract. Multistar took the opposite view. It claimed that it was Geocon who still owed money to Multistar under their subcontract and filed proofs of debt with the liquidator. The liquidator sought an explanation from Multistar on various occasions as to the state of the accounts between the two companies. However, he was still not satisfied that Geocon's claims against Multistar had been discharged.[34]

22 The liquidator therefore rejected Multistar's proofs of debt. The content of those proofs of debt forms the subject-matter of Multistar's counterclaim in this action.

23 Both the liquidator's position and Multistar's position are contradicted by Geocon's latest available audited accounts dated 28 March 2006, drawn up

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30 Yip Mun Choon's AEIC dated 9 November 2005 at paragraph 10.

31 Lau Wei Koon's AEIC dated 13 January 2014 at paragraph 9.1; Ian Andrew Ness's AEIC at JDB 1, paragraph 38.

32 Tam Chee Chong's AEIC dated 14 January 2014 at paragraph 21.

33 Tam Chee Chong's AEIC dated 14 January 2014 at paragraph 21.

34 Tam Chee Chong's AEIC dated 14 January 2014 at paragraph 23.

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for the year ending 31 December 2005 ("the Audited Accounts"). These accounts record that Multistar owes Geocon only $52,505.[35]

24 The liquidator ultimately quantified Multistar's debt to Geocon at $10,894,835.41. In 2009, solicitors acting for the liquidator demanded this sum from Multistar. Multistar did not satisfy the demand.[36] The liquidator has therefore caused Geocon to bring this suit against Multistar.[37] The net recoveries in this suit will be applied ultimately for the benefit of Geocon's creditors.[38] Those creditors include, of course, Resource Piling.

25 This background makes it clear that although this suit is, in form, an action brought by a wholly-owned subsidiary against its parent, it is, in substance, a suit brought on behalf of the creditors of an insolvent company against the entity which owns and which previously controlled it. I make this observation not because there is anything wrong in any of this, but only to explain why Multistar knows far more than Geocon itself about the Multistar/Geocon subcontract and about the manner in which Geocon accounted in its books and records for the financial aspects of the subcontract (see, *eg*, [208] below).

Geocon's amendment application

26 During the course of proceedings, Geocon applied for leave to amend its statement of claim. This took place after the trial and after the parties had exchanged written closing submissions, but before the parties made their oral

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35 5DBOD 1281.

36 Tam Chee Chong's AEIC dated 14 January 2014 at paragraph 24.

37 Tam Chee Chong's AEIC dated 14 January 2014 at paragraph 25.

38 Tam Chee Chong's AEIC dated 14 January 2014 at paragraph 25.

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closing submissions. I granted Geocon leave to make its amendments as I was of the view that they would allow me to determine the true state of the accounts between the parties and that any prejudice to Multistar could be compensated by costs. I gave the detailed reasons for my decision in *Geocon Piling & Engineering Pte Ltd (in compulsory liquidation) v Multistar Holdings Ltd (formerly known as Multi-Con Systems Ltd)* [2015] 3 SLR 1213. Multistar's appeal against that decision was dismissed (see *Multistar Holdings Ltd v Geocon Piling & Engineering Pte Ltd* [2016] 2 SLR 1 ("the CA's Amendment Decision")).

Geocon's case

27 Geocon's case is that Multistar still owes it money. In response to points raised by Multistar, Geocon submits that its claims are not time-barred and that it is not estopped from making them. It submits also that Multistar remains liable to Geocon regardless of the nature of the Multistar/Geocon subcontract, *ie*, whether it is a lump sum or reimbursement contract. Geocon has also proposed a few alternative ways in which the quantum of Multistar's liability to Geocon may be assessed.

28 I now explain Geocon's case in more detail.

Geocon's case on liability

Geocon's claims are not time-barred

29 Geocon submits that its claims are not time-barred under s 6 of the Limitation Act (Cap 163, 1996 Rev Ed) ("Limitation Act"). It argues that its cause of action accrued only when its works were complete and its accounts finalised.

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30 Geocon submits that it was able to finalise its claims only when all expenses were accounted for or, alternatively, when the final account with Sembcorp was settled (*ie*, after all of Sembcorp's back charges had been brought into account). This did not take place until, at the earliest, 2009, for the following reasons:[39]

(a) The project under the Multistar/Geocon subcontract was not completed until late 2005 at the earliest. The last entry for GC 1077 was in October 2005. Further, Multistar's claims for back charges extend to December 2008.

(b) Prior to Geocon's liquidation, the parties were managed by common officers. It would be impractical or naïve to have expected Geocon to bring an action against Multistar, its parent company, in those circumstances.

(c) Geocon's cause of action against Multistar did not arise, and time did not run, because the common directors of Geocon and Multistar chose not to bill or finalise the accounts at the material time.

(d) The final account for C421 was not finalised until 2009. The Statement of Final Account between Sembcorp and Multistar was issued only in September 2009, showing the parties' agreement of the final sums due for the work done under C421.

(e) Mr Tan signed the Statement of Final Account only on 9 April 2009[40] and any time bar would set in only on 8 April 2015.

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39 PCS at pages 58 to 59.

40 1DAEIC 359.

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Geocon is not estopped from making its claims against Multistar

31 Geocon further submits that it is not estopped by Tay J's decision in the 2004 Litigation from making its claims against Multistar.

32 The mere fact that Geocon and Multistar were co-defendants in the 2004 Litigation does not mean that Geocon made a clear and unequivocal representation that it would not bring an action against Multistar arising from the 2004 Litigation or that there would never be a divergence of interests between the parties.[41]

33 There is also no issue of *res judicata* because Tay J did not need to, and did not, decide in the 2004 Litigation whether Geocon owed Multistar money or *vice versa*.[42] The claims in this action are completely different from the claims in the 2004 Litigation. Tay J's findings that there was a Geocon/Resource Piling subcontract and that Geocon – and not Multistar – was therefore Resource Piling's counterparty have no bearing on the Multistar/Geocon subcontract.[43]

34 Geocon further submits that it is not estopped from asserting a case in this action which contradicts its own Audited Accounts.[44] The Audited Accounts, as I have pointed out (see [23] above), record that Multistar owes Geocon only $52,505. By the very fact that Geocon claims from Multistar more than $52,505 in this action, the liquidator disclaims the accuracy of the Audited Accounts. Thus, for example, the liquidator rejects Multistar's

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41 Plaintiff's rebuttal submissions at paragraph 19(c).

42 Plaintiff's rebuttal submissions at paragraph 19(e).

43 Plaintiff's rebuttal submissions at paragraph 19(j).

44 Plaintiff's rebuttal submissions at paragraph 19(i).

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entitlement to set-off a pro-rated discount against the sums it owes Geocon (discussed below at [178] – [190]).[45] That pro-rated discount is an element of the calculation leading to the net receivable of $52,505 from Multistar reflected in the Audited Accounts.

Geocon was engaged on a reimbursement basis

35 Geocon's primary case on liability is that, following Resource Piling's exit in April 2004, Geocon took over and completed Resource Piling's unfinished work on the basis that Multistar would reimburse Geocon for all costs incurred thereby. The Multistar/Geocon subcontract was thereby varied from a lump sum contract to a reimbursement contract.[46] Geocon's case is that it is therefore entitled to recover these costs in full and that Multistar's liability to Geocon is not limited to the $26m lump sum price stipulated in the Multistar/Geocon subcontract.

36 Geocon claims that it entered into a subcontract with Multistar for project management.[47] This was recorded in two letters dated 27 and 28 September 2002 from Multistar to Geocon. In particular, Multistar sought expressly to clarify in its letter dated 28 September 2002 that the subcontract is "a project management subcontract".[48] The subject of the letter also expressly states that the subcontract is "PROJECT MANAGEMENT CONTRACT FOR BORED PILING WORKS".[49] Hence, the works which

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45 Tam Chee Chong's AEIC dated 21 February 2014 at paragraphs 26 to 39.

46 PCS at page 45.

47 SOC at paragraph 14(i); Plaintiff's rebuttal submissions at paragraphs 12 to 13.

48 1DBOD 46.

49 1DBOD 46.

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Geocon completed on Resource Piling's behalf did not fall within the ambit of the Multistar/Geocon subcontract.

37 For its case that Multistar agreed to reimburse Geocon for the costs it incurred in taking over and completing Resource Piling's work, Geocon relies on the affidavit of evidence-in-chief ("AEIC") which Mr Tan filed on 8 November 2005 in the 2004 Litigation ("8 November 2005 AEIC"). The relevant passages from Mr Tan's AEIC are as follows:

> 44. Upon Resource Piling's repudiation of the works at the ECP South Location, Multicon attempted to engage another sub-contractor to carry out the bored piling works at the ECP South Location abandoned by Resource Piling …
>
> 47. In the end, it was decided that Multicon would engage Geocon to carry out [the works at the ECP South Location] as it was projected that Geocon would be able to carry out the [works] at a lower and more competitive rate than that quoted by [another competitor]. This was possible because Multicon was able to leverage on its status as Geocon's parent company to engage Geocon on a *purely reimbursement basis*. Accordingly, Multicon was only liable to *reimburse Geocon for all costs and expenses directly incurred by Geocon in the course of carrying out the [works at the ECP South Location]*. …
>
> [emphasis by Geocon]
>
> 53. Following Resource Piling's total repudiation of the Sub-contract and abandonment of the Project works, Multicon again approached several sub-contractors to submit quotations for the completion of the Sub-contract works abandoned by Resource Piling (the "balance works"). …
>
> 54. Given the lack of viable alternatives and the urgency of the situation, Multicon's only practical recourse was to engage Geocon to take over the balance works, as Geocon was already supervising the Sub-contract works on Multicon's behalf, and was also carrying out the [works at the ECP South Location]. … The completion of the balance works abandoned by Resource Piling was carried out *at additional costs to Multicon*. …
>
> [emphasis mine]

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38 Geocon's case is that Mr Tan's 8 November 2005 AEIC proves that Multistar did agree to reimburse Geocon in full for all costs and expenses incurred by Geocon in the course of carrying out the bored piling works at the ECP South Location and the Balance Works, disregarding the $26m lump sum agreed in the Multistar/Geocon subcontract.[50] That is what Geocon says Mr Tan meant when he said that Multistar engaged Geocon to complete the bored piling works at the ECP South Location and the Balance Works on a "reimbursement basis" or "at additional costs to [Multistar]".

39 Geocon called Mr Tan as its witness in this action. He gave his evidence under subpoena.[51] Geocon's purpose in calling him was purely to get him to confirm his 8 November 2005 AEIC and thereby render it admissible in evidence. In the course of his examination-in-chief by counsel for Geocon,[52] however, Mr Tan said that his 8 November 2005 AEIC was wrong and that Multistar had never agreed to vary its subcontract with Geocon to remove the $26m lump sum limit. He thus took a position which appeared to be different from that taken in his 8 November 2005 AEIC. As a result, counsel for Geocon sought leave to cross-examine Mr Tan pursuant to s 156 of the Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act"). The principal point taken by counsel for Multistar was that Mr Tan's evidence on this point was not relevant.[53] I considered it to be relevant and therefore allowed Geocon's counsel permission to cross-examine Mr Tan.

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50 PCS at paragraphs 198 and 200.

51 SBP 32/2014 dated 3 February 2014.

52 Certified Transcript dated 27 February 2014.

53 Certified Transcript dated 27 February 2014 at page 56, lines 5 to 13.

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40 Mr Tan maintained his position even under cross-examination by Geocon's counsel:[54]

> Geocon: Mr Tan, can I refer you to back to page 3566? I'm sorry, page 3567. Paragraph 47. You said here that it was: "... because Multicon was able to leverage on its status as Geocon's parent company to engage Geocon on a purely reimbursement basis." Do you see that?
>
> ...
>
> Mr Tan: Yes.
>
> Geocon: Do you stand by this statement?
>
> Mr Tan: As I state, it's wrongly written.
>
> Geocon: Now, can you please explain why you say it is wrongly written?
>
> Mr Tan: Because the contract from the first day until Geocon left the job, it's always lump sum basis, and I written this one, it's from the group basis rather from individual company ...

41 Geocon does not accept the evidence which Mr Tan has given in this action. Instead, it urges me to rely on Mr Tan's earlier evidence in his 8 November 2005 AEIC. Geocon submits that that evidence is more likely to be correct and accurate because Mr Tan's AEIC was made closer to the events in question, when Mr Tan's memory was still fresh. Geocon argues that Mr Tan has changed his evidence and has testified that the 8 November 2005 AEIC was wrong because he wants to protect Multistar from liability as he was its Managing Director at the time of the events in question.[55]

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54 Certified Transcript dated 27 February 2014 at pages 62 to 63.

55 PCS at paragraph 204.

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Multistar is liable even on lump sum basis

42 Geocon submits that even if it is not entitled to be paid on a reimbursement basis but only on a lump sum basis subject only to variations, there is nonetheless a net outstanding sum due from Multistar to Geocon under the original Multistar/Geocon subcontract (see below at [61] – [63]).[56] I now set out Geocon's quantification of its claims on both its primary basis (reimbursement) and its alternative basis (lump sum plus variations).

Geocon's case on quantum

43 Geocon's pleadings puts forward a total of four substantive alternative quantifications of its claim. I shall refer to them as Claims 1 to 4.

44 Claims 1 and 2 are premised on a finding that Multistar varied the Multistar/Geocon subcontract and agreed to reimburse Geocon in full for the works at the ECP South Location and the Balance Works. Claims 3 and 4 are premised on a finding that the Multistar/Geocon subcontract remained throughout a lump sum contract, subject only to variations. Claims 3 and 4 also accept variations amounting to $3,164,119.98.[57]

45 Geocon also puts forward a fifth alternative. That alternative, however, simply leaves damages to be assessed by the court. This alternative need not, therefore, be analysed separately.

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56 PCS at paragraph 222.

57 SOC at paragraphs 39 to 40. See also Plaintiff's reply and defence to counterclaim (amendment no. 4) at paragraph 17(b).

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Claim 1

46 Claim 1 is for the sum of $10,894,835.41.[58] This claim is premised on Multistar having engaged Geocon to complete the works on a reimbursement basis. Claim 1 has three components:

(a) Unbilled work done by Geocon on GC 1063;

(b) Unbilled work done by Geocon on GC 1077; and

(c) Overcharging by Multistar on GC 1063.

(1) Claim 1(a)

47 In respect of Claim 1(a), Geocon submits that a total of $1,840,843.70 worth of work done on GC 1063 has never been billed. Geocon arrives at this figure by subtracting the value of its last tax invoice to Multistar (in relation to C421) ($22,391,771.72) from Geocon's total project cost on GC 1063 ($24,232,615.42).

48 Geocon derives the figure of $24,232,615.42 as the total project cost on GC1063 in the following way. The value of work done by Resource Piling as found by Tay J in the 2004 Litigation was $13,744,417.03. Geocon's management fees and costs to complete the outstanding work on GC 1063 after Resource Piling ceased work at the ECP South Location was $10,488,198.39. Adding these two figures together yields $24,232,615.42.

49 Geocon derives the figure of $10,488,198.39 by taking Geocon's project costs on GC 1063 and deducting from it the total value of the claims

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[58] SOC at paragraph 37.

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which Resource Piling made against Multistar for work done. According to information provided by Mr Tan and Mr Chan on an examination of judgment debtor in the 2004 Litigation, Geocon's project cost on GC 1063 amounted to $23,645,839.39.[59] According to Multistar's records, Resource Piling claimed a total of $13,157,641.00 for work done.[60]

50 Geocon submits that the value of Geocon's last tax invoice to Multistar in relation to C421 should have been $22,391,771.72. Geocon derives a significant portion of this sum from Progress Claim 12 dated 5 October 2004 from Geocon to Multistar. It states that "Workdone – Period Ending January 2004" is $22,729,854.58. Geocon then adds $840,431.44 for "Total Value of Provisional Works" and subtracts "5% Retention" ($1,178,514.30). Geocon therefore arrives at the figure of $22,391,771.72 for its last tax invoice to Multistar.[61]

51 Geocon therefore claims $24,232,615.42 - $22,391,771.72 = $1,840,843.70 for unbilled work done on GC 1063.

(2) Claim 1(b)

52 Geocon relies on a computer printout from its records to prove that "Total Expenses for #GC 1077 as at Sept'05" was $6,750,992.66.[62] The liquidator's evidence is that he did not find any records to indicate that Geocon ever invoiced Multistar for these expenses.

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59 SOC at paragraph 16; Yip Mun Choon's AEIC dated 9 November 2005 at YMC-2, page 11.

60 SOC at paragraph 17; Yip Mun Choon's AEIC dated 9 November 2005 at YMC-2, page 11.

61 Writ of Summons Annexure B.

62 SOC at paragraphs 23 to 25; Writ of Summons Annexure C.

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(c) Claim 1(c)

53 Geocon submits that Multistar overcharged Geocon by an amount of $2,302,999.05 on GC 1063.[63] As mentioned above at [10], the typical procedure was for Resource Piling to bill Multistar for its own work and for Multistar to pass that on to Geocon by raising a bill against Geocon. According to Tay J's judgment in the 2004 Litigation (at [12]), the actual amount received by Resource Piling from Multistar was $3,830,131.36 and Geocon was entitled to assert certain back charges against Resource Piling amounting to $6,726,885.79. But according to tax debit notes issued by Multistar to Geocon on GC 1063,[64] Multistar charged Geocon a higher amount of $12,860,016.20 for work done by Resource Piling. Geocon therefore seeks to recover what it calls an overcharge, *ie*, the amount of $12,860,016.20 - $3,830,131.36 - $6,726,885.79 = $2,302,999.05.[65]

54 The breakdown of Claim 1 is as follows:

Claim 1(a): GC 1063 unbilled work

Geocon's project cost on GC 1063	$24,232,615.42
Less: Geocon's last tax invoice to Multistar in relation to C421 (invoice no. TI/1063/P12/1004/04 dated 5 October 2004)	$22,391,771.72
Geocon's unbilled work on GC 1063	**$1,840,843.70**

Claim 1(b): GC 1077 unbilled work

Geocon's unbilled work on GC 1077	**$6,750,992.66**

Claim 1(c): GC 1063 overcharging by Multistar

Multistar's tax debit note up to Progress Claim 21 (MC/DN/1103/002) to Geocon	$12,860,016.20
Less: amount received by Resource Piling	$3,830,131.36

63 SOC at paragraphs 26 to 29.

64 Writ of Summons Annexure D.

65 SOC at page 9.

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Less: contra charges (incurred by Multistar on behalf of Resource Piling)	$6,726,885.79
Overcharging	**$2,302,999.05**

55 The total amount that Geocon claims under Claim 1 is therefore $1,840,843.70 + $6,750,992.66 + $2,302,999.05 = **$10,894,835.41.**

Claim 2

56 Claim 2 is Geocon's primary alternative claim for the sum of $8,591,836.36. Claim 2 is also premised on Multistar having engaged Geocon to complete the bored piling works on a reimbursement basis.

57 The breakdown of Claim 2 is as follows:

Project costs on GC 1063	$23,645,839.39
Project costs on GC 1077	$6,750,992.66
Additional costs incurred for Resource Piling work not accounted for in Geocon's books	$586,776.03
Total Geocon costs for C421 Project	**$30,983,608.08**
Less: amount paid by Multistar (as reflected in invoice dated 5 October 2004)	$22,391,771.72
Unbilled amount based on reimbursement basis	**$8,591,836.36**

58 It can be seen that most of the components of Claim 2 are also components of Claim 1. There are only two differences. First, Claim 2 takes the project costs on GC 1063 as $23,645,839.39.[66] That is the figure given by Mr Tan and Mr Chan on the examination of judgment debtor in the 2004 Litigation (see [49] above) rather than building the figure up (see [48] above). Second, Claim 2 incorporates a new item: "Additional costs incurred for Resource Piling Work not accounted in Geocon's books".

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[66] SOC at paragraph 16; Yip Mun Choon's AEIC dated 9 November 2005 at YMC-2, page 11.

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59 Geocon derives the figure of $586,776.03 for additional costs in this way. As mentioned above at [49], Geocon's project costs on GC 1063 were initially quantified at $23,645,839.39. After that quantification, Tay J revised the value of work done by Resource Piling to $13,744,417.03. The actual amount Resource Piling claimed from Multistar was $13,157,641.00. The difference of $13,744,417.03 - $13,157,641.00 = $586,776.03 is therefore included as a component of Claim 2 under "Additional costs incurred for Resource Piling Work not accounted in Geocon's books".

60 Geocon derives the sum of $8,591,836.36 in the following way. Geocon takes the sum of Geocon's project costs on GC 1063, on GC 1077 and the additional costs incurred for Resource Piling's work (amounting to a total of $30,983,608.08), and deducts the amount paid by Multistar as reflected in Geocon's last tax invoice to Multistar ($22,391,771.72).

Claim 3

61 Claim 3 is for $52,505, being the sum of $52,504.73 rounded off. Claim 3 takes as its starting point the lump sum of $26m under the Multistar/Geocon subcontract, adds $3,164,118.98 as the value of agreed variation orders and accepts that Multistar has correctly asserted a right to deduct certain sums from it, leaving the figure of $52,504.73:

Original Multistar/Geocon subcontract	$26,000,000.00
Add: variation orders	$3,164,118.98
Less: discount for settlement between Multistar and Sembcorp (pro-rated)	$1,802,901.51
Less: amount paid by Multistar (as reflected in invoice dated 5 October 2004)	$22,391,771.72
Less: back charge by Multistar to Geocon for progress claims by Resource Piling	$1,148,720.39
Less: back charge by Sembcorp to Multistar for supply of materials	$1,719,200.11

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Less: back charge by Multistar to Geocon for management fees and salaries paid on behalf of Geocon	$1,060,665.91
Less: loan by Multistar to Geocon	$353,977.55
Less: loan by Multistar to Multi-Con Machinery Pte Ltd on behalf of Geocon	$634,377.06
Balance due	**$52,504.73**

Claim 4

62 Claim 4 is identical to Claim 3, save that it posits the alternative scenario that Multistar has no right to deduct anything from the sums owed to Geocon. Claim 4 is therefore for $6,772,347.26 derived as follows:

Original Multistar/Geocon subcontract	$26,000,000.00
Add: variation orders	$3,164,118.98
Less: amount paid by Multistar (as reflected in invoice dated 5 October 2004)	$22,391,771.72
Balance due	**$6,772,347.26**

63 The difference between Claims 3 and 4 reflect the parties' dispute over the validity of six individual items that Multistar seeks to set off from the $26m lump sum under the Multistar/Geocon subcontract. These six items, which I shall discuss in more detail below (see [178] onwards) comprise the following:

(a) Discount for settlement between Multistar and Sembcorp (pro-rated) ($1,802,901.51);

(b) Back charge by Multistar to Geocon for progress claims by Resource Piling ($1,148,720.39);

(c) Back charge by Sembcorp to Multistar for supply of materials ($1,719,200.11);

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(d) Back charge by Multistar to Geocon for management fees and salaries paid on behalf of Geocon ($1,060,665.91);

(e) Loan by Multistar to Geocon ($353,977.55); and

(f) Loan by Multistar to Multi-Con Machinery Pte Ltd on behalf of Geocon ($634,377.06).

Multistar's case

64 Geocon makes both general submissions, which, if accepted, are dispositive of Geocon's claims, as well as specific submissions on particular aspects of each of Geocon's claims. I begin by summarising Multistar's general submissions.

Multistar's general submissions

Geocon's claims are time-barred

65 Multistar's case is that Geocon's claims are time-barred pursuant to s 6(1)(*a*) of the Limitation Act. The action was commenced on 31 January 2011. This was more than six years after Geocon issued its final progress claim (*ie*, Progress Claim No 8) to Multistar. This progress claim is dated both 30 and 31 December 2004. The original date on the progress claim was 4 January 2005 but this date was struck out and replaced by the handwritten date 30 December 2004.[67] Multistar submits that even assuming in Geocon's favour that time ran from 4 January 2005, Geocon's action is time-barred.

66 Further, the fact that the action was commenced by Geocon's liquidator on Geocon's behalf does not prevent the time bar from running

[67] DCS at paragraphs 116, 131 and 132; 4DBOD 1044.

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against Geocon (*Dynasty Line Ltd (in liquidation) v Sukamto Sia and another and another appeal* [2014] 3 SLR 277). There is nothing special about an action commenced after a company goes into liquidation which prevents the usual time bar from running against the company.

67 Multistar disagrees with Geocon that Geocon's cause of action arose only in 2009. Geocon's progress claims were made long before 2009. Although Geocon argues that the accounts between Sembcorp and Multistar were finalised only in 2009, Multistar asserts that Geocon's claims against Multistar are independent of the final account between between Multistar and Sembcorp.

68 Further, Multistar submits that Geocon's case is not premised on any form of iniquity such as fraud or fraudulent breach of trust so as to trigger the operation of the exception under s 22 of the Limitation Act.

69 For these reasons, Multistar submits that Geocon's action is time-barred and should be dismissed.

Estoppel

70 Multistar argues also that Geocon's claim should be dismissed on grounds of estoppel. Multistar submits that both parties appeared as co-defendants in the 2004 Litigation and had common legal representation. That common legal representation resulted in the following:

> (a) An obligation or duty or an estoppel by convention that the present action – by one co-defendant against the other – would not be mounted; or

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(b) A clear and unequivocal representation of fact that there was never any divergence of interest between the parties as co-defendants in the 2004 Litigation with the result that Geocon was precluded from commencing or maintaining this action or that it is absolutely inequitable for Geocon to commence or maintain this action.

(c) A clear and unequivocal promise that there never was or there would never be any conflicts of interest between the parties as co-defendants in the 2004 Litigation. This representation was relied upon by Multistar with the result that it would be absolutely inequitable for the present action to have been mounted or maintained.[68]

71 Multistar further argues that the Audited Accounts must be taken to have been accepted by the parties as being true and fair. The Audited Accounts state that Multistar owes Geocon only the sum of $52,505. Geocon chose not to alter the account stated between the parties by, for example, seeking a judicial determination in the 2004 Litigation that Multistar's liability to Geocon was or ought to be something other than the $52,505 reflected in the Audited Accounts. Geocon must therefore be taken to have accepted the Audited Accounts as being true and accurate. Geocon is therefore now estopped from questioning the truth and accuracy of the Audited Accounts in this action.[69]

Geocon performed works under lump sum contract subject to variations

72 Should the court reject Multistar's submissions on limitation and estoppel, Multistar takes the position that Geocon completed Resource Piling's

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[68] DCS at paragraph 153.

[69] DCS at pages 84 to 85.

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work on the original lump sum basis, subject only to variations, and not on a reimbursement basis.[70]

73 Multistar starts with the undisputed point that the Multistar/Geocon subcontract stipulated a fixed lump sum of $26m subject only to variations. Multistar argues that there is no evidence that the subcontract was ever varied into a reimbursement contract. Neither was the subcontract terminated and replaced with a new subcontract on a reimbursement basis.

74 Although Mr Tan's 8 November 2005 AEIC suggests that Geocon was engaged to complete the works on a reimbursement basis, Multistar submits that Mr Tan's evidence in the 8 November 2005 AEIC should be rejected as it was not admitted into evidence. Even if it were, the evidence should be rejected because Mr Tan is not a credible witness.[71]

75 Multistar argues that Mr Tan's 8 November 2005 AEIC was not admitted in evidence.[72] Geocon could have relied on s 141 of the Evidence Act to summon Mr Tan to produce the 8 November 2005 AEIC as evidence, in which event Mr Tan would not have had to take the stand as a witness. Geocon could also have asked Mr Tan to identify the 8 November 2005 AEIC when Mr Tan was cross-examined on 27 February 2014. But neither was done. Geocon also did not make any application to admit Mr Tan's 8 November 2005 AEIC in preference to his oral evidence in this action.[73]

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70 DCS at paragraph 31(c).

71 DCS at paragraph 40.

72 DCS at paragraph 40.

73 DCS at paragraph 40.

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76 Multistar argues that even if Mr Tan's 8 November 2005 AEIC were admitted, Mr Tan is not a credible witness and his evidence should therefore be rejected.[74] When Mr Tan was cross-examined on 27 February 2014, he took the position that the Multistar/Geocon subcontract had always been a lump sum contract.[75] This was a change from the position he had, on Geocon's case, taken in his 8 November 2005 AEIC (see above at [37]). When asked why he had stated that Geocon was engaged on a "purely reimbursement basis", Mr Tan responded that the statement in his 8 November 2005 AEIC was wrong[76] and that he did not know it was wrong at the time he deposed to it.[77] Geocon subsequently put to Mr Tan that he was changing his position because he wanted to help Multistar avoid liability to Geocon.[78]

77 In support of its position that Geocon had completed the works on a lump sum basis subject only to variations, Multistar relies on the AEIC of one Lau Wei Koon ("Mr Lau"). Mr Lau was the Manager of Accent Business Consulting Pte Ltd, a company engaged by Multistar and Geocon to provide business consultancy and corporate support services at the time of the events in question.[79] Mr Lau states at paragraph 15.3 of his AEIC that:

> All of Geocon's progress claims/tax invoices from September 2002 to December 2004 (covering GC 1063 and GC 1077) [were] made based on the original lump sum contract of $26 million and do not reflect, in any way, a cost plus basis.

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74 DCS at paragraph 40.

75 Certified Transcript dated 27 February 2014 at page 63, lines 18 to 19.

76 Certified Transcript dated 27 February 2014 at page 63, lines 10 to 15.

77 Certified Transcript dated 27 February 2014 at page 67, line 8.

78 Certified Transcript dated 27 February 2014 at page 69, lines 3 to 8.

79 Lau Wei Koon's AEIC dated 13 January 2014 at paragraph 3.

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78 Multistar also relies on the Experts' Further Joint List of Agreed/Not Agreed Issues ("the Experts' Further Joint List of Issues"), prepared jointly by the parties' expert witnesses. In this list, the experts agree that there was no written agreement varying the Multistar/Geocon subcontract.[80] They also agree that if it is held that the Multistar/Geocon subcontract was not varied, then the subcontract would require payment of the lump sum of $26m for the whole of the works.[81]

79 Geocon's expert, as I have already noted, is Mr Baker (see [18] above). Multistar's expert is one Ian Andrew Ness ("Mr Ness"). Mr Ness is a professional construction consultant from Contract Solutions International Pte Ltd.[82]

80 Mr Ness states the following in the Experts' Further Joint List of Issues:

> [A]ll of Geocon's progress claims were based on a lump sum methodology (and not the cost reimbursable method) from the start of the work in 2002 to well into 2005. The party's contemporary actions did not reflect an amendment to a cost reimbursable method in November 2002.[83]

81 Multistar argues that even if Geocon performed works outside the terms of the subcontract, Geocon did not satisfy the condition for reimbursement as it had not made payment first.[84] A claim for reimbursement can be made only if the party claiming reimbursement has actually made

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80 DCS at paragraph 144(a)(i).

81 DCS at page 76.

82 Ian Andrew Ness's AEIC dated 27 March 2013.

83 DCS at page 76.

84 DCS at paragraph 122.

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payment to a payee. Multistar relies on the definition of the term "reimburse" used in *Westcoast Energy Inc v R* [1991] 1 CTC 471,[85] where the court defined "reimburse" as "to repay or make up to (a person) the sum expended". Given that Geocon did not make payment to Resource Piling in the first place (*ie*, Geocon did not first "expend" the amounts for which it now claims a right to be reimbursed), Geocon cannot bring a claim against Multistar for work done on a reimbursement basis.

82 Further, Multistar argues that the change from GC 1063 to GC 1077 does not signify that the parties entered into a new contract for Geocon to complete the Balance Works. Although Geocon refers to GC 1077 as a "contract" in its statement of claim, Multistar disagrees. It argues that GC 1063 and GC 1077 do not represent contracts but are mere accounting codes for Geocon's internal reference. This is substantiated by Mr Yip's evidence[86] that "GC" was a prefix for the project. The experts in their Experts' Further Joint List of Issues also state that "GC 1077 is the cost code for the Balance Works".[87] As such, although GC 1077 was used in reference to the Balance Works, this did not imply that a new contract was created when Geocon was engaged to complete such works.

83 For these reasons, Multistar maintains that the parties at all times contracted and performed their obligations under the Multistar/Geocon subcontract without any change, *ie*, on the basis that Geocon was entitled to be paid no more than the fixed lump sum of $26m subject only to variations.

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85 1DBA at Tab 5.

86 Certified Transcript dated 27 February 2014.

87 DCS at paragraph 84; John Dudley Baker's AEIC dated 1 September 2014 at JDB-3, page 11.

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Multistar/Geocon subcontract not limited to project management

84 Multistar submits that Geocon's obligations under the Multistar/Geocon subcontract include not just project management but also an obligation to deliver completed all the bored piling works under C421.

85 Multistar refers to the subject of the letter from Multistar to Geocon dated 27 September 2002 ("the Letter of Award"), which states that the Multistar/Geocon subcontract is a "SUBCONTRACT FOR BORED PILING WORKS". The Letter of Award comprises, on its face, Multistar's confirmation of its acceptance of Geocon's offer for "the Supply And Installation of Bored Piling works including project management of this subcontract works". Clause 1 of the Letter of Award indicates that the scope of Geocon's service "shall be but is not limited to" project management and the "[performance of] the subcontract works".[88] All of this suggests that project management was only one aspect of Geocon's obligations under the Multistar/Geocon subcontract and not the entirety of its obligations.[89]

86 Multistar acknowledges that a letter sent the day after the Letter of Award (*ie*, on 28 September 2002) referring to and enclosing a project management contract suggests that the Multistar/Geocon subcontract was no more than a project management subcontract. Nonetheless, Multistar submits that the court should rely on the Letter of Award instead as it is that letter which sealed the parties' contractual agreement. It is the Letter of Award which confirms Multistar's decision to award Geocon the subcontract and contains the terms of their agreement.[90]

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88 DCS at paragraph 58.

89 DCS at paragraph 57.

90 DCS at paragraph 57.

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87 Hence, Multistar argues that all of the works which Geocon completed on Resource Piling's behalf fell within the ambit of the Multistar/Geocon subcontract, which entitles Geocon to be paid $26m on a lump sum basis, subject only to variations.

Costs incurred under Geocon/Resource Piling subcontract belong to Geocon

88 Multistar submits that, as a result of the 2004 Litigation, Geocon must be taken to be Resource Piling's counterparty for the bored piling works, not Multistar.[91] As such, Geocon's costs incurred in performing the Geocon/Resource Piling subcontract are for Geocon's account and cannot be passed on to Multistar. Hence, Geocon is not entitled to a reimbursement from Multistar above the $26m lump sum.

89 Multistar refers to Geocon's pleadings in which Geocon makes reference to costs incurred on GC 1063 and GC 1077. Because Tay J decided that Resource Piling had contracted with Geocon and not Multistar, Multistar argues that references to Multistar in the pleadings must refer to Geocon instead. For example, Multistar refers to paragraph 14(ii) of Geocon's statement of claim in which Mr Tan's 8 November 2005 AEIC was cited for his statement that Geocon was engaged to complete Resource Piling's abandoned works "at additional costs to Multicon". Multistar argues that the statement should read "at additional costs to Geocon" instead. Multistar also refers to Geocon's statement of claim at paragraph 15, where Geocon cites the evidence given by Mr Yip in his AEIC dated 9 November 2005 in which he states that Multistar incurred project cost amounting to $23,645,839.39 in GC

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[91] DCS at paragraph 74.

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1063 and project cost amounting to $6,750,992.66 for GC 1077. Multistar argues that these should be read as project costs incurred by Geocon.

90 Nonetheless, even if Tay J's findings are not applicable, Multistar maintains that the works should rightly be "at additional costs to Geocon", pursuant to the original Multistar/Geocon subcontract and not on any reimbursement basis that is extraneous to the Multistar/Geocon subcontract.[92]

Geocon is entitled to only 70% of its project management fees

91 Multistar submits that Geocon is entitled to only 70% of its project management fees under the Multistar/Geocon subcontract and that it has therefore been overpaid.

92 Multistar argues that Geocon's entitlement to project management fees extends only so far as Resource Piling completed the project which Geocon was engaged to manage. According to Mr Baker,[93] Resource Piling had completed only 70% of is project when it ceased work completely at all locations in April 2004. Therefore, Geocon should be entitled only to 70% of the agreed project management fees of $7,289,489.16. On that basis, 30% of $7,289,489.16 (*ie*, $2,186,846.75) should be deducted from Geocon's total project costs for GC 1063 ($24,232,615.42). This yields $22,045,768.67. Taking the difference between $22,045,768.67 and $22,391,771.72 (as indicated on Multistar's last tax invoice to Geocon) shows that Geocon has been overpaid by $346,003.05.[94]

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92 DCS at paragraph 79(b).

93 John Dudley Baker's AEIC dated 8 June 2012 at JDB-1, paragraph 62.

94 DCS at paragraph 115.

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Geocon's solicitors face a conflict of interest

93 Multistar submits that Geocon's solicitors are afflicted in this action by a conflict of interest.[95] This conflict of interest is said to arise because Geocon's solicitors represent Geocon in this action on the instructions of Geocon's liquidator but also acted for Resource Piling, a substantial creditor of Geocon, in the successful application to wind up Geocon.

94 Multistar cites paragraph 23 of the 2013 Law Society Practice Directions and Rulings Guide, which states as follows:

> When a firm of solicitors is acting for the petitioning creditors and the Court appoints a provisional liquidator for the company pending the outcome of the winding up petition, it is undesirable for the solicitors for the petitioning creditors to act also on behalf of the provisional liquidator.

Multistar argues that, since a provisional liquidator may exercise all the powers of a liquidator, it stands to reason that the same prohibition must apply with equal if not greater force against a firm of solicitors acting for both the liquidator and the petitioning creditors.

95 Multistar submits that, although Geocon's solicitors ceased formally to act for Resource Piling in Geocon's liquidation after Geocon appointed them to act for Geocon in this action, the reality of the situation is otherwise. For instance, Geocon's solicitors represented Resource Piling in the 2004 Litigation against Geocon and Multistar. Mr Baker, who appears as Geocon's expert in this action, also appeared as Resource Piling's expert in the 2004 Litigation.[96]

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95 DCS at paragraph 124.

96 DCS at page 64.

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96 Multistar submits that it is undesirable for Geocon's solicitors to represent Geocon, given that they might put themselves in a position of conflict of interest with the danger of Resource Piling being favoured against other creditors of Geocon, including Multistar. This is especially a danger given that Geocon's liquidator has actually rejected Multistar's proofs of debt.

97 Multistar therefore urges the court to dismiss Geocon's claims on the basis of conflict of interest.

Multistar's specific submissions in response to Geocon's claims

Claim 1(a)

98 In response to Claim 1(a) for unbilled work done for GC 1063, Multistar submits that it is Geocon instead who has been overpaid.

99 Multistar takes as a constant the sum of $7,289,489.16, representing Geocon's project management fees (see above at [9]), and calculates the cost of the work done by Geocon for GC 1063 as one of three alternative possibilities:

(a) $7,289,489.16 + $3,198,709.23 = $10,488,198.39;

(b) $7,289,489.16 + $3,833,870.60 = $11,123,359.76; or

(c) $7,289,489.16 + $3,943,771.41 = $11,233,260.57.

100 In alternative (a), Multistar quantifies the value of the work done by Geocon as $10,488,198.39. This is a figure which Geocon itself pleads[97] as comprising Geocon's project management fees and its costs in completing

[97] SOC at paragraph 18.

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Resource Piling's abandoned works at the ECP South Location. Multistar's figure of $3,198,709.23 is a balancing figure, obtained by deducting Geocon's project management fees from its pleaded figure of $10,488,198.39.

101 In alternative (b), Multistar quantifies the value of the work done by Geocon as $11,123,359.76. In this alternative, Multistar adds Geocon's project management fees ($7,289,489.16) to the sum of $3,833,870.60. Multistar asserts that the figure of $3,833,870.60 represents Geocon's costs in completing the works at *only* the ECP South Location. It derives this figure by taking the difference between $6,750,992.66 and $2,917,122.06. The figure of $6,750,992.66 is Geocon's figure for "Total Expenses for #GC 1077 as at Sept'05" (see Geocon's Claim 1(b) at [52] above). But this actually covers Geocon's costs to complete the works at *both* the ECP South Location and the Balance Works. So Multistar deducts from this figure the sum of $2,917,122.06, being Mr Baker's quantification[98] of the actual additional costs which Geocon incurred in completing the Balance Works alone.[99] Hence, by taking the difference between $6,750,992.66 and $2,917,122.06, and adding the project management fees of $7,289,489.16, Multistar arrives at the sum of $11,123,359.76.

102 In alternative (c), Multistar quantifies the value of the work done by Geocon as $11,233,260.57. Geocon's project management fees are added to the sum of $3,943,771.41. The latter figure is taken from Mr Yip's AEIC,[100] where he identifies it as the total additional cost incurred by Multistar to complete the works at the ECP South Location.

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98 Experts' Further Joint List of Issues at paragraph 1.7.

99 DCS at paragraph 106.

100 Yip Mun Choon's AEIC dated 9 November 2005.

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103 Given that Geocon claimed $22,391,771.72 from Multistar in its latest tax invoice (see above at [50]), Multistar argues that it has overpaid Geocon by one of three alternative amounts:

(a) $22,391,771.72 - $10,488,198.39 = $11,903,573.33; or

(b) $22,391,771.72 - $11,123,359.76 = $11,268,411.96; or

(c) $22,391,771.72 - $11,233,260.57 = $11,158,511.15.

Claim 1(b)

104 Multistar submits that Geocon's claim of $6,750,992.66 for GC 1077 is incorrect. This is because Mr Baker has identified the sum of $2,917,122.06 as the cost Geocon has incurred in completing the Balance Works (see above at [101]). As such, Multistar argues that it has instead overpaid Geocon. Following Geocon's submission that there are three possible ways of calculating the cost of Geocon's work for GC 1063 (see above at [99]), Multistar appears to have calculated the amount that has been overpaid by taking the difference between $2,917,122.06 and Geocon's cost of completing works at the ECP South Location. Multistar lists three alternatives.[101]

(a) $2,917,122.06 - $3,198,709.23 = - $281,587.17

(b) $2,917,122.06 - $3,833,870.60 = - $916,748.54

(c) $2,917,122.06 - $3,943,771.41 = - $1,026,649.35

105 Multistar therefore submits that it has instead overpaid Geocon by these three possible amounts.

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[101] DCS at paragraph 106(f).

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Claim 1(c)

106 Multistar argues that Geocon has no basis to claim an overcharge amounting to $2,302,999.05 for GC 1063. Multistar refers to Mr Baker's AEIC[102] in which he states that he "consider[s] [that] the amount of SGD 2,302,999.05 is included within the [project costs of] GC 1063 and is not separately claimable."[103]

107 Multistar also offers its own explanations in respect of the sums of $6,726,885.79 and $3,830,131.36, which Geocon submits (at [53] above) represents the back charges it was entitled to set off against Resource Piling and the actual amount of money Resource Piling received from Multistar respectively.

108 Multistar explains that the back charges of $6,726,885.79 were owed by Resource Piling to Geocon, rather than to Multistar. This followed from Tay J's finding that Geocon was Resource Piling's counterparty in the Geocon/Resource Piling subcontract. Multistar submits that because Resource Piling has paid the amount of $6,726,885.79 to Geocon, Geocon has suffered no loss.[104]

109 In respect of the sum of $3,830,131.36, Multistar explains that it represents monies payable by Geocon to Resource Piling as it was Geocon which Tay J found to be Resource Piling's actual counterparty in the Geocon/Resource Piling subcontract in the 2004 Litigation. Specifically, Item 6 of Clause 1 of the Geocon/Resource Piling subcontract states that "All

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102 John Dudley Baker's AEIC dated 8 June 2012.

103 DCS at paragraph 28.

104 DCS at paragraph 113(c).

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claims of Resource Piling shall be backcharge[d] fully to Geocon Piling." Accordingly, it is Geocon's obligation to pay to Multistar all monies which Multistar paid to Resource Piling in discharging any of Geocon's financial obligations to Resource Piling under the Geocon/Resource Piling subcontract. This obligation includes an obligation to pay to Multistar the amount of $3,830,131.36.[105]

Claim 2

110 As most of the figures in Claim 2 are reflected in Claim 1, Multistar's objections to Claim 2 are largely the same as its objections to Claim 1. Nonetheless, Multistar makes a few additional arguments.

111 First, Multistar submits that under Claim 2, the "Project costs on GC 1063" should be $24,232,615.42 instead of $23,645,839.39, following Tay J's upward adjustment to the value of work done by Resource Piling. This would also be consistent with Geocon's Claim 1(a), which specifically states that Geocon's project cost for GC 1063 amounts to $24,232,615.42 (see above at [47] and [54]).[106]

112 The figure of $586,776.03, which Geocon refers to as the "Additional costs incurred for Resource Piling Work not accounted in Geocon's books", is the difference between $24,232,615.42 and $23,645,839.39. Multistar's position is that the sum of $586,776.03 is a cost incurred by Geocon under the Geocon/Resource Piling subcontract. Geocon cannot claim this amount from Multistar because Multistar is not party to the subcontract. Neither is Geocon entitled to a reimbursement from Multistar because the Multistar/Geocon

105 DCS at paragraph 113(d) to (f).

106 DCS at paragraph 114(a).

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subcontract is based on a fixed lump sum. For the same reason that Claim 1 fails, Multistar submits that Claim 2, which simply reorganises the components of Claim 1, must also fail.[107]

Claim 3

113 Multistar submits, on the basis of the Audited Accounts, that if it owes Geocon any money at all, it is the sum of $52,504.73, as Geocon claims in Claim 3. The accounts indicate that the "Amounts due from holding company" is $52,505. Multistar agrees that the figure of $52,505 is nothing more than the figure of $52,504.73 rounded off.[108]

114 Multistar argues that Geocon must be considered to have accepted the deductions for back charges. Although Geocon pleads in its statement of claim that the back charges are invalid,[109] it has not given any reasons why this should be the case. These reasons appear only in its reply.[110] Multistar submits that Geocon is precluded from relying on these reasons in its reply by virtue of O 18 r 10 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"). That provision prevents a party from making any allegation of fact or from raising any new ground or claim in a pleading which is inconsistent with its previous pleading.

Claim 4

115 Geocon's Claim 4 simply denies all the back charges and loans which Multistar seeks to deduct from Geocon's lump sum payment of $26m. It is

107 DCS at paragraph 114(e).

108 DCS at paragraphs 118 to 119.

109 SOC at paragraph 40.

110 Reply and defence to counterclaim (amendment no. 4).

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axiomatic, therefore, that Multistar's position on Claim 4 is simply to assert that it is entitled to deduct these back charges and loans.

Multistar's counterclaim

116 In addition to advancing a defence, Multistar advances a counterclaim. The basis of the counterclaim is that Multistar owes Geocon nothing at all, and that it is instead Geocon who owes Multistar money.[111] Multistar quantifies its counterclaim against Geocon in three alternative sums: $154,580.25, $865,773.90 or $658,688.92.[112]

Counterclaim in the sum of $154,580.25

117 The first alternative for Multistar's counterclaim is derived by taking the lump sum to which Geocon is entitled under the Multistar/Geocon subcontract and deducting: (i) Multistar's (notional) progress payments to Geocon; (ii) the costs, charges, and other expenses which Multistar incurred on Geocon's behalf; and (iii) a proportion of the discount which Multistar agreed to give Sembcorp in their final account.[113]

118 Multistar submits that the total amount that Geocon is entitled to under the Multistar/Geocon subcontract is $28,957,034. This sum is obtained by adding the lump sum of $26m to the sum of $2,957,034 for variation works.[114] Multistar takes the sum of $2,957,034 for variation works from Geocon's final progress claims for GC 1063 and GC 1077.[115] Further, Multistar submits that

111 Defence and counterclaim at paragraph 28.

112 DCS at paragraph 204.

113 Defence and counterclaim at paragraphs 16 to 28.

114 Defence and counterclaim at paragraph 19.

115 Defence and counterclaim at paragraph 19.

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it made progress payments amounting to $9,235,890.88.[116] It also incurred costs, charges, and other expenses on behalf of Geocon amounting to $18,904,552.36.[117]

119 Multistar's first alternative counterclaim of $154,580.25 is therefore derived as follows:

Amount that Geocon is originally entitled to claim under the Subcontract	$26m (lump sum) + $2,957,034 (variation works) = $28,957,034
Less: Total amount of progress payments	$9,235,890.88 ($8,890,826.07 after deducting GST)
Less: Costs, charges and/or expenses incurred by Multistar on behalf of Geocon	$18,904,552.36 ($18,417,886.68 after deducting GST)
Less: Geocon's pro-rated share of the discount agreed between Multistar and Sembcorp	$1,802,901.51
Total	**- $154,580.25**

Counterclaim in the sum of $865,773.90

120 Multistar's alternative quantification of its counterclaim is $865,773.90. Multistar arrives at that figure by adding a claim for $711,193.65 to its claim for $154,580.25 calculated as set out above at [117] – [118]).[118]

121 The additional sum of $711,193.65 comprises two elements. First, Multistar submits that Geocon did not complete the pile-hacking work that it was obliged to perform under the Multistar/Geocon subcontract. As a result, Multistar had to incur the cost of completing this work as well as all the other

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116 Defence and counterclaim at paragraph 23.

117 Defence and counterclaim at paragraph 24.

118 DCS at paragraph 204.

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remaining work on behalf of Geocon. Second, Multistar submits that it bore back charges which Sembcorp imposed on Multistar late, for work done by Geocon prior to about October 2005. All of these costs total $711,193.65. I discuss these costs in greater detail below at [128] – [141].[119] According to Mr Lau, these costs were not taken into account in Geocon's Claim 3, which includes a set of costs to be deducted from the lump sum of $26m (see above at [61]).

122 Multistar's second alternative counterclaim of $865,773.90 is therefore derived as follows:[120]

Total cost incurred by Multistar	$711,193.65
Add: counterclaim for $154,580.25 (see [117] – [118] above)	$154,580.25
Total	**$865,773.90**

Counterclaim in the sum of $658,688.92

123 Multistar's final alternative counterclaim is in the sum of $658,688.92. Multistar's starting point is that Geocon admits in its Audited Accounts that Multistar owed Geocon only the sum of $52,505. These accounts were prepared before Multistar incurred the costs of completing the worked abandoned by Geocon and bore the late back charges imposed by Sembcorp. Multistar arrives at the value of $658,688.92 by taking the difference between the total cost it has incurred ($711,193.65) and the sum of $52,505 that it owes to Geocon:[121]

Total cost incurred by Multistar	$711,193.65
Less: amount owed by Multistar to Geocon as	$52,504.73

[119] Defence and counterclaim at paragraph 29.

[120] DCS at paragraph 204.

[121] Defence and counterclaim at paragraphs 30 to 31.

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reflected in Audited Accounts	
Total	**$658,688.92**

Geocon's response to Multistar's counterclaim

124 Before turning to the parties' dispute over the components that make up the sum of $711,193.65, I set out Geocon's general submissions in response to Multistar's counterclaim.

125 Geocon denies Multistar's counterclaim in its entirety. Its position is that Sembcorp imposed no "late" back charges on Multistar. This is evidenced by the reduction in the back charges deducted by Sembcorp from Multistar's account as at 15 June 2005 ($9,397,177.89, in Sembcorp's payment certificate 28A)[122] compared to those deducted as at 31 March 2009 ($9,221,901.40, in Sembcorp's payment certificate 29).[123] This means that there were no "late" back charges by Sembcorp.[124] The final account between Sembcorp and Multistar in September 2009 reveals that the same amount of $9,221,901.40 was deducted. This confirms that there can be no further claims by Sembcorp.[125]

126 Geocon also submits that pile-hacking work must have been completed by 2005, before Geocon went into liquidation. Geocon thus characterises Multistar's claim for pile-hacking, late back charges, and residual work from October 2005 to December 2008 as questionable.[126] Mr Ness testified at trial that by the time Geocon was wound up in June 2006, about 99.5% of the piling work had already been completed.[127] Mr Baker also explained that the

122 1DAEIC 621.

123 1DAEIC 360.

124 PCS at paragraph 288(a).

125 PCS at paragraph 288(b).

126 PCS at paragraph 288(d).

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bulk of the bored-piling work for GC 1077 was completed by about January 2005 with residual work, such as pile-hacking work, being carried out in the period up to 30 September 2005. Foo Hee Kang, the Managing Director of Resource Piling,[128] also testified that the pile-hacking work for the relevant section of the KPE should have been completed by June 2005. In his Supplementary AEIC, he explains that as at March 2004, there were only 2363 piles left to be hacked, and if the work was carried out at the same pace as before then it should have been completed by June 2005.

127 Geocon argues that, even taking Multistar's case on this point at its highest, Multistar should be entitled to deduct only $200,000 for pile-hacking work. Foo Hee Kang's evidence was that Resource Piling had left 1,000 piles uncompleted. He estimated that it would have cost about $145,000 to hack all of them. Mr Baker estimated the cost at $150,000 whereas Mr Ness estimated the cost at $200,000. Therefore, the sum of $200,000 is the most that Multistar can claim as costs incurred for the pile-hacking work.

The components of the figure $711,193.65

128 I now turn to the parties' dispute over the sum of $711,193.65. As seen from the discussion above, this figure is central to Multistar's counterclaim.

129 Multistar relies primarily on its Job Detail Report dated 6 January 2010.[129] Mr Lau claims that the Job Detail Report is a record of both the costs incurred by Multistar to complete the works after Geocon went into

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127 PCS at paragraph 289; Certified Transcript dated 1 September 2014 at page 90, lines 10 to 13.

128 Foo Hee Kang's AEIC dated 9 January 2014 at paragraph 1.

129 Lau Wei Koon's AEIC dated 13 January 2014 at page 15.

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liquidation as well as late back charges imposed by Sembcorp on Multistar for work done by Geocon prior to October 2005 but not included in the agreed set-offs.[130]

130 The Job Detail Report is obtained from Multistar's cost ledger MC 1005/MC 1005A. Multistar claims that MC 1005/MC1005A records (i) the costs incurred by Multistar to complete the works under C421 after Geocon went into liquidation; and (ii) the back charges by Sembcorp for work done by Geocon prior to October 2005 but not included in the agreed set-offs.[131] The cost ledger reveals some 30 components which total $711,193.65.[132] Geocon argues that Multistar is not entitled to recover any of these costs. The sum of $711,193.65 consists of the following components:[133]

S/N	Cost component	Cost
1	Soil disposal	$70,000.00
2	Direct labour costs	$40,122.45
3	Direct labour overtime	$41,262.45
4	Central Provident Fund (CPF)	$827.62
5	Foreign Worker Levy (FWL)	$9,222.58
6	Concrete	$138,898.00
7	Reinforcement bars	$205,871.51
8	Steel materials	$21,150.00

130 Lau Wei Koon's AEIC dated 13 January 2014 at page 15.

131 DCS at paragraph 69.

132 Experts' Further Joint List of Issues at pages 31 to 38.

133 Experts' Further Joint List of Issues at paragraph 4.6-4.6.30.

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S/N	Cost component	Cost
9	Construction hand tools & equipment	$8.40
10	Consumables	$7,768.83
11	Spare parts - machinery	$118.49
12	Fuel Oil	$14,781.75
13	Gas	$4,480.00
14	Heavy machinery	$97,721.16
15	Light machinery	$8,888.60
16	Vehicle expenses	$1,326.00
17	Office expenses	$141.45
18	Workers' quarters	$6,751.84
19	Gas cylinders	$349.00
20	Steel plates	$16,650.00
21	Site facilities	$15,280.00
22	Mob/demob	$320.00
23	Medical fees	$302.55
24	Printing & stationery	$645.82
25	Transport	$2,101.70
26	Telephone/handphone	$228.25
27	Fines/course fee	$373.81
28	Performance bond charges	$3,281.24

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S/N	Cost component	Cost
29	Hire purchase interest	$56.15
30	Depreciation MV	$2,264.00
Total		**$711,193.65**

Soil Disposal

131 In relation to the counterclaim of $70,000 for soil disposal, Multistar refers to a letter dated 24 September 2006 from Multistar to Sembcorp. In the letter, Multistar attaches a quotation from Huationg Contractor Pte Ltd ("Huationg") and requests Sembcorp to make payment to Huationg on Multistar's behalf for Huationg's removal and disposal of hacked materials arising from bored piling works. Multistar refers also to Huationg's Revised Quotation dated 29 September 2006 for the sum of $70,000.[134]

132 Geocon's argues that the back charges are dubious at best because they were presented approximately well over two years after Geocon completed the bored piling works.[135] Geocon claims that these works were completed by 15 June 2005.[136] The entries in GC 1077, which captures and records the costs incurred to complete the Balance Works, only go up to October 2005. But Huationg's Revised Quotation and Sembcorp's corresponding invoice to Multistar were presented on 29 September 2006 and 17 June 2009 respectively.[137] No reasons were offered to explain why these invoices were presented so late.

134 1DAEIC 348 to 349.

135 PCS at paragraph 293(vi).

136 PCS at paragraph 293(iii); PCS at paragraph 293(a).

137 1DAEIC 349 and 367.

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Concrete

133 In relation to the $138,898 claimed as the cost of concrete, Multistar relies on two deduction forms and a tax invoice from Sembcorp indicating back charges for supply of concrete.[138] The first deduction form dated 8 November 2005 indicates that a mix of different types of concrete had been supplied between 22 September 2004 and 31 August 2005. This includes "SL75+/-25mm", "SL100+/-25mm", and "SL175+/-25mm" concrete. The first deduction amounts to $119,158.[139] The second deduction form dated 23 April 2009 indicates that a mix of "SL150-200mm 4 HR RTD", "SL150+/-25mm", "SL100+/-25mm", "SL75+/-25mm", and "SL70+/-25mm" concrete was supplied between 15 March 2005 and 1 February 2007.[140] The tax invoice dated 17 June 2009 confirms that the second deduction amounts to $19,740.[141] The sum of these two deductions gives rise to Multistar's claim for $138,898 for concrete.

134 Geocon argues that Multistar could not have incurred these costs on its behalf as concrete is consumed only during piling, which should have been completed well before October 2005. Concrete is also not used during pile-hacking works.[142]

135 Further, some of the concrete indicated in the deduction forms are unsuitable for bored piling. Mr Ness concedes that some of the concrete back charged to Geocon was not related to the concrete that goes into a bored pile.[143]

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138 1DAEIC 329, 368 and 369.

139 1DAEIC 329.

140 1DAEIC 368.

141 1DAEIC 369.

142 PCS at paragraph 293(c).

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Mr Baker supports this position, and states in the Experts' Further Joint List of Issues that bored piling requires "SL175+/-25mm" concrete. The two deduction forms indicate that some of the concrete supplied was inappropriate for bored piling.[144]

136 Geocon further submits that are no source documents such as delivery orders or invoices from the concrete suppliers showing that concrete was used for C421 and not another project.[145] As such, Multistar is unable to show that these costs are a result of works that Multistar had to complete on Geoncon's behalf pursuant to the Multistar/Geocon subcontract.

Reinforcement bars

137 Multistar seeks a sum of $205,871.51 in relation to back charges by Sembcorp for reinforcement bars. Multistar relies on a deduction form[146] and an appendix to an invoice advice from Sembcorp.[147] The deduction form states that Multistar paid $882 per tonne of reinforcement bars. The appendix to the invoice advice states "Payment on behalf (assume for rebar)" in respect of a sum of $107,063.20. Multistar claims that this forms part of the total sum of $205,871.51.

138 Geocon argues that there is no documentary evidence to show that these reinforcement bars were supplied for use under C421. Reinforcement

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143 Certified Transcript dated 1 September 2014 at page 91, lines 3 to 8.

144 Experts' Further Joint List of Issues at page 35, paragraph 4.6.6.

145 PCS at page 89.

146 1DAEIC 327.

147 1DAEIC 362.

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bars are common products used in all aspects of the construction industry. It is therefore quite possible that these were used for another project.[148]

139 Geocon submits that it is more likely that Multistar paid a lower sum of approximately $400 per tonne of reinforcement bars, instead of $882 per tonne. Multistar made a progress claim on 28 February 2005, claiming a "variation" of $400 per tonne from Sembcorp. Mr Baker explains that the contract between LTA and Sembcorp was likely to contain a "fluctuations clause".[149] As such, this difference of approximately $400 per tonne in the price of the reinforcement bars is likely to have been borne by LTA.[150] This is further substantiated by a statement of back charges issued by Multistar to Resource Piling on 24 December 2003 indicating that Multistar had charged Resource Piling $405 per tonne of reinforcement bars.[151] Geocon submits that Multistar should not be entitled to charge Geocon an amount higher than that which was paid to Sembcorp. In any case, Geocon submits that Multistar has not proven that it has incurred the cost of $205,871.51 for reinforcement bars for the purpose of C421.[152]

The remaining cost components

140 In respect of the remaining components, Multistar relies solely on its Job Detail Report.[153] Geocon raises the same argument against these remaining costs: there is insufficient evidence to establish what these costs were for and

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148 PCS at paragraph 293(d).

149 PCS at page 89.

150 PCS at pages 89 to 90.

151 3DAEIC 1632.

152 PCS at paragraph 293(d)(iv).

153 1DAEIC 313-323; Experts' Further Joint List of Issues at pages 34 to 38.

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whether they were incurred only for C421. This is also the view Mr Baker takes in the Experts' Further Joint List of Issues.[154] Geocon makes a few additional points.

141 In relation to the cost of heavy machinery and steel plates, Geocon argues that these costs could not have been incurred because they are not required for pile-hacking.[155] Even if they were used for piling, all piling work should have been completed by 2005. Geocon rejects the hire-purchase interest and depreciation as they are costs tied to the machinery.[156]

The issues

142 Before I address issues of liability and quantum squarely, the following threshold questions arise for decision:

(a) Whether Geocon's claims are time-barred;

(b) Whether Geocon is estopped from making its claims in this action;

(c) Whether Multistar engaged Geocon to complete the bored piling works at all locations on a reimbursement basis or pursuant to the original Multistar/Geocon subcontract of a fixed lump sum subject only to variations; and

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154 *Eg*, Experts' Further Joint List of Issues at page 34, paragraph 4.6.2.

155 PCS at page 89.

156 PCS at pages 91 to 92.

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(d) Whether Geocon's solicitors are acting in a conflict of interest position, and if so, what the implications (if any) are for Geocon's claims.

I deal with each threshold issue in turn.

Threshold issues

(a) Time bar

143 Geocon's claim against Multistar is not time-barred. Under s 6(1)(*a*) of the Limitation Act, Geocon had 6 years to commence this action from the date on which its underlying cause of action for breach of contract accrued. Geocon commenced this action on 31 January 2011. Geocon's action will be time-barred only if its underlying cause of action arose on or before 31 January 2005.

144 Multistar argues that Geocon's cause of action accrued on the date of Geocon's last tax invoice to Multistar, dated 31 December 2004. Geocon, on the other hand, argues that its cause of action accrued only when the accounts between the parties were finalised. This happened only when Mr Tan signed their final account in April 2009.[157] Limitation would thus set in only in April 2015.

145 It is clear to me that the parties proceeded throughout on the basis that the Multistar/Geocon subcontract was back-to-back with, and subordinate to, the Sembcorp/Multistar subcontract, which in turn was back-to-back with, and subordinate to, C421, insofar as it related to bored piling work. The final

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[157] PCS at paragraph 228(e).

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account between Multistar and Geocon under the Multistar/Geocon subcontract was therefore contingent on the final account between Sembcorp and Multistar under the Sembcorp/Multistar subcontract. It was only then that Multistar and Geocon could, between themselves, come to a definite and final position on the amounts that Multistar was entitled to back charge to Geocon for costs incurred (either by Multistar itself or by Sembcorp and back charged to Multistar), and deduct these amounts from the Multistar/Geocon subcontract sum. In fact, Claim 3 accounts for the possibility of Multistar deducting from the $26m lump sum a back charge imposed by Sembcorp for the supply of materials. Although Geocon's primary position is that Multistar should not be entitled to deduct Sembcorp's back charge from the $26m, the Sembcorp back charge remains relevant to Geocon's decision to commence proceedings. As noted by the Court of Appeal in the CA's Amendment Decision at [34], "cause of action" "simply means the essential factual material that supports a claim". Until Sembcorp and Multistar's accounts were finalised, Geocon would be unable to determine whether Multistar was in breach of its payment obligation under the Multistar/Geocon subcontract (*ie*, its cause of action would not have accrued).

146 In any event, it appears that the parties arrived at a final figure no earlier than 31 January 2006. This is the date that both the parties' general journals regarding the final accounts for GC 1077 were entered.[158] That date, of course, is less than six years before Geocon commenced proceedings.

147 For these reasons, I find that Geocon's claims are not time-barred.

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158 Lau Wei Koon's AEIC dated 13 January 2014 at pages 299 and 301.

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(b) Estoppel

148 Geocon is not estopped from making claims against Multistar by virtue of the 2004 Litigation. According to *Lee Tat Development Pte Ltd v Management Corporation of Strata Title Plan No 301* [2005] 3 SLR(R) 157 at [14] – [15], the requirements for an issue estoppel are: (a) a final and conclusive judgment on the merits; (b) judgment by a court of competent jurisdiction; (c) identity between the parties to the two actions that are being compared; and (d) identity of subject matter in the two proceedings.

149 I find that there is neither identity of parties nor identity of subject matter between this action and the 2004 litigation. Although Multistar and Geocon were both parties to the 2004 Litigation, they were co-defendants there with aligned interests and under common control. They stand before me in this action as adversarial parties with adversarial interests and separate control. Further, there was in the 2004 Litigation no judicial determination on the merits of any claim which Geocon might bring against Multistar. I agree with Geocon that Tay J did not need to, and therefore did not, decide in the 2004 Litigation whether Geocon owed Multistar money or *vice versa*. As such, there can be no issue estoppel barring Geocon's claims.

150 I hold also that Geocon is not estopped from going behind its own Audited Accounts. The Audited Accounts are insufficient on their own for the court to impose liability on any party. This principle is enshrined in s 34 of the Evidence Act, which states as follows:

> Entries in books of accounts regularly kept in the course of business are relevant whenever they refer to a matter into which the court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

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151 Further, a liquidator of a company is not only entitled but obliged to go behind the audited accounts of the company in order to establish the true extent of its liabilities. An estoppel which may operate against the company pre-liquidation cannot operate post-liquidation so as to preclude the liquidator from performing his statutory obligations. A liquidator has a statutory obligation to: (i) inquire into the company's financial affairs; (ii) ascertain the true value of its liabilities; and (iii) to repay those liabilities *pari passu*, subject to the priorities established by the Companies Act (Cap 50, 2006 Rev Ed).

152 As the Court of Appeal pointed out in *Fustar Chemicals Ltd (Hong Kong) v Liquidator of Fustar Chemicals Pte Ltd* [2009] 4 SLR 458 at [13] – [14]):[159]

> 13 … In a winding up, a creditor bears the burden of proving the debt on a balance of probabilities (see *Westpac Banking Corporation v Totterdell* [1997] 142 FLR 137 and *The Trustee in Bankruptcy of Lo Siu Fai Louis v Toohey* [2005] 4 HKC 51). The liquidator must assess every proof of debt lodged and may call for further evidence in support of the claim. In considering a proof, the liquidator is not bound by the audited accounts or audit confirmations entered into by the company, and is entitled to go behind them to determine the veracity of the debt claimed (*In re Van Laun; ex parte Pattullo* [1907] 1 KB 155 at 162; *Re Ice-Mack Pte Ltd*; *AA Valibhoy & Sons (1907) Pte Ltd v Official Receiver* [1989] 2 SLR(R) 283 ("Re Ice-Mack")).
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> 14 These principles apply to the winding up of both solvent and insolvent companies. In *Re Menastar Finance Ltd (in liq), Menastar Ltd v Simon* [2003] 1 BCLC 338 (a case of an insolvent company), Etherton J said the liquidator has a duty to "ensure that the assets of the insolvent company 'are distributed amongst those who are justly, legally and properly creditors …'" … at [46]. Only the true liabilities of a company should be met. …

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[159] Plaintiff's rebuttal submissions at paragraph 20(b).

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153 The Court of Appeal did not, in this passage, consider whether an estoppel could operate to prevent a liquidator from ascertaining the true value of the company's assets. But recovering and realising the company's true assets, by action if necessary, is just as much part of a liquidator's duties as is ascertaining and repaying the company's true liabilities. I therefore see no difficulty, by reason of estoppel or otherwise, in Geocon's liquidator pursuing a claim in this action which is inconsistent with the Audited Accounts.

154 Quite apart from this principle, it is also my view that the Audited Accounts carry little evidential weight as any sort of admission by Geocon. Before Geocon went into liquidation, both Multistar and Geocon were under common control and management. That is why, as I have previously observed (at [25]), Multistar knows far more than Geocon itself about the manner in which Geocon accounted in its books and records for the financial aspects of the Multistar/Geocon subcontract. Indeed, Multistar exercised its control to determine how Geocon accounted for these financial aspects. I therefore attach little or no weight to the figures in the Audited Accounts as being admissions by Geocon. Those figures originated in truth from Multistar.

155 Thus, I find that Geocon is not estopped from making its claims in the present proceedings.

(c) Reimbursement or lump sum subject to variations

156 A preliminary issue that I must address before I can determine the nature of the Multistar/Geocon subcontract is the admissibility of Mr Tan's 8 November 2005 AEIC. I find that it is admissible under s 147 of the Evidence Act.

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157 At trial, I allowed Geocon's application to cross-examine Mr Tan on the basis that his evidence at trial appeared to contradict his evidence in his 8 November 2005 AEIC. The apparent contradiction – central to Geocon's case – is that Mr Tan states in his 8 November 2005 AEIC that Multistar "engage[d] Geocon on a purely reimbursement basis" but testified in court that the 8 November 2005 AEIC was wrong and that Geocon had always been engaged pursuant to a fixed lump sum contract.

158 In the ensuing cross-examination, Geocon put this apparent contradiction to him in accordance with s 147 of the Evidence Act. As a result, the 8 November 2005 AEIC became admissible as evidence of the truth of the facts stated in it under s 147(3) of the Evidence Act, and not merely as a basis for undermining the credibility of Mr Tan's oral evidence in this action.

159 Turning to the issue proper, I find that the evidence does not support Geocon's case that Multistar agreed to reimburse Geocon for all its costs incurred in completing Resource Piling's abandoned works. I say that for two reasons. First, the scope of Geocon's duties under the Multistar/Geocon subcontract includes the completion of the bored piling works that Multistar was itself to perform under its contract with Sembcorp under C421. Second, the evidence in Mr Tan's 8 November 2005 AEIC does not support Geocon's position that Multistar agreed to reimburse Geocon for all its costs incurred in completing Resource Piling's abandoned works.

160 I begin with the first reason. The Multistar/Geocon subcontract was concluded by the Letter of Award. That letter bore the title "C 421 KALLANG AND PAYA LEBAR EXPRESSWAY SUBCONTRACT FOR BORED PILING WORKS". It is signed by Mr Tan for Multistar and Mr Chan for Geocon. The first paragraph of the Letter of Award states that the contract

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is "on the Supply And Installation of Bored Piling works including project management of this subcontract works". Clause 1 of the contract provides that the scope of Geocon's duties under the contract "shall be but is not limited to" the management, execution and completion of the subcontract works and the performance of the subcontract works on the same terms and conditions as set out in C421. Under Clause 2 of the contract:

> The Subcontract Sum is agreed at a fixed Lump Sum of S$26,000,000.00 (Singapore Dollars Twenty-Six Million Only) excluding GST to carry out the Subcontract Works in full and complete compliance with the Employer and [Sembcorp's] Consultant requirements.

161 It is evident that Geocon undertook a contractual duty under the contract to procure the completion of the bored piling works under C421. Geocon could procure that result itself, by performing the bored piling work using its own manpower and equipment, or it could procure that result by subcontracting that work to a third-party subcontractor. It chose the latter route. But it remained obliged to deliver bored piling work, completed in accordance with its contractual commitment to Multistar. Geocon's contractual obligation to project-manage Resource Piling was simply a means to perform this fundamental duty and bring about the contractually-stipulated result.

162 Multistar sent a second letter to Geocon on 28 September 2002 ("the 28 September 2002 Letter"). This letter is titled "C 421 KALLANG AND PAYA LEBAR EXPRESSWAY PROJECT MANAGEMENT CONTRACT FOR BORED PILING WORKS". It refers to the "Letter of Award with [Geocon] dated 27th September 2002" and states that Multistar "would like to make clear" to Geocon that:

> This subcontract to [Geocon] is a project management subcontract and [Geocon is] responsible to co-ordinate and

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> manage [Multistar's] subcontractor, M/s Resource Piling Pte Ltd for the complete installation of the said subcontract works …

It reiterates that the contract price is a lump sum of $26m and further states that this sum comprises $7,289,489.16 as project management fees and $18,710,510.84 as Resource Piling's contract sum with Multistar. The 28 September 2002 Letter is signed only by Multistar.

163 In my view, nothing in the 28 September 2002 Letter detracts from my finding that Geocon undertook a contractual obligation under the Multistar/Geocon subcontract to procure the completion of the bored piling works. The 28 September 2002 Letter does not contradict the Letter of Award. Geocon had the obligation to manage the project but it also remained under a contractual obligation to Multistar to procure the completion of the works, one way or another, within the $26m lump sum. This is the case even if the parties may have envisaged that the bored piling works would be carried out by Resource Piling under Geocon's project management. Nothing in the 28 September 2002 Letter had the contractual effect, or indeed could have had the contractual effect, of relieving Geocon from the contractual obligation it had undertaken a day earlier under the Multistar/Geocon subcontract.

164 Geocon's case rests on three statements by Mr Tan in his 8 November 2005 AEIC. But those statements must be read in context. The context was that Mr Tan prepared the 8 November 2005 AEIC for trial in the 2004 Litigation. That litigation was brought by Resource Piling against Geocon and Multistar arising from the contract between Resource Piling and (as was held in that suit) Geocon. In the 8 November 2005 AEIC, Mr Tan states (at paragraph 47) that Multistar engaged Geocon on a "*purely* reimbursement basis" (emphasis added) to complete the bored piling works at the ECP South

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Location and thus Multistar was "*only* liable to reimburse Geocon for all costs and expenses directly incurred by Geocon in the course of carrying out" the works at the ECP South Location (emphasis added). At paragraph 54, Mr Tan states that the Balance Works abandoned by Resource Piling were "carried out at additional costs to [Multistar]".

165 Mr Tan, as a witness for Geocon in this action, gave evidence that the contract between Multistar and Geocon was "always lump sum". There was, he said, an error at paragraph 47 of his 8 November 2005 AEIC where he said that Geocon was engaged on a "purely reimbursement basis" and that accordingly "[Multistar] was only liable to reimburse Geocon for all costs and expenses directly incurred by Geocon [for works at the ECP South location]". He explained that the 8 November 2005 AEIC was prepared on the basis that Multistar and Geocon were members of the same group. The parties had common officers and their interests were aligned. As such, he saw no need in the 8 November 2005 AEIC to distinguish between individual companies in the group. Mr Tan explained as follows:[160]

Court:	You're not now talking about Multi-con [and] Geocon against Resource, you're talking about Multi-con as against Geocon.
Mr Tan:	Yes, but when I written this affidavit, it's Multi-con, Geocon against Resource.
Court:	But that's not what [paragraph] 47 is talking about.
Mr Tan:	The 2004 --
Court:	Mr Tan, paragraph 47 is talking about Multi-con's liability to Geocon.
Mr Tan:	Yes, your Honour. I said the liability from Multi-con to Geocon is a lump sum contract.

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[160] Certified Transcript dated 27 February 2014 at page 64.

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> Court: No, Mr Tan, I'm trying to understand why you thought this statement in paragraph 47 was true when you affirmed this affidavit on penalty of perjury.
>
> Mr Tan: At that time because I think as a group rather than individual company.

166 I accept Mr Tan's evidence. His evidence is consistent with his words in the 8 November 2005 AEIC and also with the broader context in which he used those words. In the passages from his AEIC which I have quoted at [164] above, and as I have indicated in italics, he used the words "only" and "purely" to describe the contractual basis on which Geocon took over Resource Piling's works. Those are words of limitation, not extension. Further, the context in which he used those words was to support the common position taken in the 2004 Litigation by both Multistar and Geocon, as members of the same group under common ownership and management, *ie*, that Multistar had mitigated its loss arising from Resource Piling's alleged breach of contract by performing the work within the group at cost and without a profit element. When read in context, it is clear to me that Mr Tan was not saying that Multistar undertook an open-ended liability to indemnify Geocon for bringing about the very result (completed bored piling work) which Geocon was already under a contractual obligation to Multistar to bring about under the Multistar/Geocon subcontract.

167 Geocon suggests that Mr Tan's evidence is false because he must have realised that the contents of his 8 November 2005 AEIC are disadvantageous to Multistar in the current proceedings and therefore now seeks to change his position. But Geocon has not provided any evidence to support this assertion.

168 Geocon is also unable to produce any further evidence, oral or documentary, of an agreement to vary the Multistar/Geocon subcontract. In

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my view, Multistar would not have had any commercial reason to agree to such a variation, given my finding that Geocon undertook under the Multistar/Geocon subcontract to procure completion of the bored piling works. It would be entirely at odds with commercial reality for Multistar to have agreed to reimburse Geocon for all costs incurred to complete the works, given that it had an existing agreement to limit its liability to Geocon to the agreed lump sum.

169 In the circumstances, I find that the Multistar/Geocon subcontract was never varied. Geocon was and remained at all times contractually responsible to procure the completion of the bored piling works subcontracted to it within the agreed $26m lump sum (*ie*, pursuant to the terms of the Multistar/Geocon subcontract). For the same reason, I agree with Multistar's submission (see [88] above) that Geocon has no legal basis to pass up to Multistar any costs which it incurred under the Geocon/Resource Piling subcontract which exceed the $26m lump sum which it agreed with Multistar under the Multistar/Geocon subcontract.

170 I note Multistar's argument that Geocon should be entitled only to 70% of the project management fees under the Multistar/Geocon subcontract because Resource Piling completed only 70% of the works under the Geocon/Resource Piling subcontract. This argument is inconsistent with Multistar's position that the contract was made on a lump sum basis. Geocon was entitled to the full $26m lump sum once it had performed its obligations under the Multistar/Geocon subcontract to deliver completed bored piling work, either through its own efforts or by project-managing Resource Piling. As previously mentioned at [161], Resource Piling was simply a means for Geocon to perform its wider duty under the Multistar/Geocon subcontract. As such, the duration for which Geocon actually project-managed Resource Piling

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and the period of time which Resource Piling remained on the job under the Geocon/Resource Piling subcontract are both irrelevant to Geocon's entitlement to the fixed lump sum of $26m, provided it delivered what it contractually promised, which it eventually did.

(d) Conflict of interest faced by Geocon's solicitors

171 Multistar submits that Geocon's solicitors have acted in this action while afflicted by a conflict of interest. That conflict is said to arise from the fact that they represent Geocon's liquidator in this action but previously represented Resource Piling in the 2004 Litigation and in the winding up application which led to Geocon's liquidator's appointment. Counsel for Multistar also suggested in his oral submissions that Geocon's liquidator may be acting at the behest of Resource Piling in this action. Multistar urges the court to dismiss Geocon's claims on such a basis.

172 This argument has no impact on the present proceedings. First, to the extent that Multistar is suggesting that Geocon's solicitors are acting for Geocon while in conflict of interest, that is separate from the merits of this action and is a matter to be taken up in separate proceedings under the Legal Profession Act (Cap 161, 2009 Rev Ed), if there is a basis for it.

173 There is nothing before me to suggest that the liquidator was acting at the behest of Resource Piling. Even if that were so, and even if there were anything improper in that, that too is a matter that to be taken up in separate proceedings under the Companies Act (Cap 50, 2006 Rev Ed).

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Liability and quantum

174 My decision that Geocon completed Resource Piling's works under the original Multistar/Geocon subcontract means that Geocon's Claims 1 and 2 must be dismissed. That leaves only Claims 3 and 4. The only difference between Claim 3 and Claim 4 is that Claim 3 accepts, whereas Claim 4 denies, that Multistar is entitled to deduct certain items (as listed above at [63]) from the contract sum comprising the $26m lump sum and the agreed variations.

175 It is Multistar which asserts, in its defence and counterclaim, that these amounts were properly deducted. Multistar denies Claim 4 on this basis. Accordingly, the burden of proof is on Multistar to show, as part of its defence, that it is entitled to deduct these sums.

176 Multistar argues that Geocon is taken to have accepted the deductions pursuant to O 18 r 10 of the ROC (see above at [114]). I disagree. This rule prevents a party from making an allegation of fact or raising new grounds or claims in a pleading that is inconsistent with a previous pleading. Although Geocon provided its reasons for rejecting the deductions only in its reply and defence to counterclaim, these reasons are not inconsistent with its previous pleading, *ie*, its statement of claim, which pleads that the deductions are invalid.

177 I will set out the parties' arguments as well as my findings on each of these deductions in turn.

(i) Discount for settlement between Multistar and Sembcorp

178 It is not disputed that on 8 and 10 November 2004, Multistar and Sembcorp agreed on the final sum of $30.75m under C421.[161] That sum

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incorporated a discount of $1,905,480.53 which Multistar agreed to give Sembcorp[162] from the total value of work done under C421 of $32,655,480.53.[163] Multistar seeks to recover $1,802,901.51[164] out of the $1,905,480.53 discount from Geocon under the Multistar/Geocon subcontract. That sum is 94.62% of the total discount given to Sembcorp and is derived by taking the ratio of the lump sum value of the Multistar/Geocon subcontract ($26m) to the lump sum value of the Sembcorp/Multistar subcontract ($27,479,313).

179 Multistar submits that Geocon and Multistar agreed orally that Multistar would be entitled to recover from Geocon the discount which it extended to Sembcorp.[165] This oral agreement was alleged to have been made between Mr Tan and Mr Benny Oh in or around the latter part of 2004.[166] Multistar submits that the parties were at liberty to agree to this change to the Multistar/Geocon subcontract and that this variation bound Geocon by reason of its consent alone, with no need for Multistar to furnish any fresh consideration to Geocon.

180 Multistar argues that the existence of this oral agreement is supported by the evidence of one Chua Seng Kiat, Francis ("Mr Chua"), Multistar's Chief Executive Officer.[167] At trial, Mr Chua referred to a letter from Multistar to Geocon dated 31 July 2008 sent by one Mano Sabnani ("Mr Sabnani"), Group Managing Director of Multistar.[168] In the letter, Mr Sabnani claims that

161 1AB 25 to 27; PCS at paragraph 270.

162 SOC at paragraph 31.

163 6AB 3331.

164 Defendant's reply submissions at paragraph 31.

165 DCS at paragraph 177; FNBP dated 1 November 2012 at page 3.

166 DCS at paragraph 177; FNBP dated 1 November 2012 at page 3.

167 Chua Seng Kiat's AEIC dated 10 January 2014 at paragraph 1.

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certain representatives from Geocon were present at the meetings. These representatives were Mr Benny Oh, the General Manager of Geocon, and one Norrimah Binte Mohd Noh ("Ms Noh"), Geocon's then Quantity Surveyor. The letter also states that Geocon agreed to the terms of the settlement including the deduction of $1,802,901.51 as a discount. A copy of the term sheet proposal (indicating the figure of $1,802,901.51) that was prepared by Mr Benny Oh and Ms Noh, and which was submitted to and approved by Multistar, was attached to the letter.

181 According to Multistar, Geocon appears to have taken the discount into consideration in the final account and in the Audited Accounts. Thus, the draft Statement of Final Accounts of Geocon[169] includes a line-item reading "LESS: DISCOUNTED AMOUNT BASED ON PRO-RATED PERCENTAGE (a) $1,905,480.53 x 94.62%" as $1,802,901.51. Further, the Audited Accounts state that Multistar owes Geocon the sum of $52,505.[170] The only way to arrive at this figure is by taking into account the discount. Multistar submits that this value is nothing more than $52,504.73 rounded off,[171] which in turn is simply Geocon's Claim 3. That claim takes the discount into account. Given that the sum of $52,504.73 is arrived at after taking into account the discount of $1,802,901.51, this shows that Geocon itself applied the discount to its Audited Accounts.

182 Geocon's position is that there is no basis for deducting the pro-rated discount of $1,802,901.51 from the sum due under the Multistar/Geocon

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168 7AB at 3808 to 3811.

169 Lau Wei Koon's AEIC dated 13 January 2014 at page 300.

170 5DBOD 1282.

171 DCS at paragraph 119.

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subcontract. Geocon's response to Multistar's reliance on the draft Statement of Final Accounts of Geocon is that it was simply a draft: it is not signed and thus there is no evidence that Geocon agreed to the discount. Further, it is the liquidator's evidence that he has seen nothing to show that Geocon agreed to the discount. Mr Lau also agreed at trial that he has not seen any written agreement evidencing Geocon's agreement to bear a discount.[172]

183 Geocon refers to Mr Tan's 8 November 2005 AEIC at paragraph 58, which states that Resource Piling's departure caused a delay of more than three months and that it was for that reason that Multistar negotiated a discount and settlement with Sembcorp.[173] Geocon submits that the discount could not be justified on this basis because in reality, there was no delay arising from Resource Piling's departure.[174] At paragraph 9 of Mr Tan's 8 November 2005 AEIC, it is stated that the original completion date of Sembcorp and Multistar's contract was 1 November 2005. As at 15 June 2005, Sembcorp had certified through a payment certificate that $30.6m out of $30.75m of the work for C421 had been completed. This meant that 99.5% of the work had been done. The "Extend Date" on the payment certificate also states "01 Nov 2005", which is the same completion date under Sembcorp and Multistar's contract. These stand as evidence that there was no delay.[175] Further, there is no documentary evidence to support Multistar's contention that Geocon was responsible for any delay, or that there were any such delays in the first place.

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172 PCS at paragraph 272.

173 PCS at paragraph 273.

174 PCS at paragraph 274.

175 PCS at paragraph 274.

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184 Geocon argues that even if a pro-rated discount should apply to the Multistar/Geocon subcontract, the discount should be $1,632,110.23 instead of $1,802,901.51. Mr Lau also agreed during trial that the correct discount should be less than $1,802,901.51.[176] In a letter dated 8 February 2010 from Multistar to the liquidator, it was stated that the Sembcorp discount was only $1,724,971.80. The correct pro-rated discount should therefore be $1,632,110.23.

185 I reject Multistar's submission that Geocon agreed to bear the discount. Multistar has produced no admissible evidence to prove this aspect of its case. The letter dated 31 July 2008 (referred to above at [180]) is inadmissible hearsay evidence, and even then on two levels. First, Mr Sabnani as the presumed author of the letter did not testify in person and submit to cross-examination as to the letter's contents. Second, the letter does not indicate that Mr Sabnani was himself present at the meetings between Sembcorp and Multistar where the discount was allegedly agreed in the presence of Geocon's representatives. He therefore does not even claim to have personal knowledge that Geocon consented to the discount at the meeting. Accordingly, I find that the letter and its contents are inadmissible.

186 I also reject Multistar's submission that the letter is admissible under any applicable exception under s 32 of the Evidence Act. During oral closing submissions, counsel for Multistar referred me to s 32(1)(*b*)(iv) of the Evidence Act.[177] I do not need to express a view on the applicability of s 32(1)(*b*)(iv) because Multistar did not comply with the notice requirements under O 38 r 4 of the ROC read with s 32(4) of the Evidence Act. But even if I

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176 Certified Transcript dated 28 February 2014 at page 69.

177 Certified Transcript dated 9 May 2016 at page 51, line 26.

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were to accept counsel's argument that s 32(1)(*b*)(iv) applies, it does nothing more than to dispense with the need for Mr Sabnani to attend court and give evidence of the contents of his letter. Section 32(1)(*b*)(iv) does not address the fact that Mr Sabnani has no personal knowledge of the meeting and of the agreement said to have been reached with Geocon there.

187 Mr Sabnani's letter presents a compound hearsay problem. Multistar has failed to address it, let alone cure it.

188 Counsel for Multistar also sought to rely on s 32(1)(*k*) of the Evidence Act. By express exception in s 32(4), the notice requirements of that subsection do not apply to s 32(1)(*k*).[178] Counsel suggested that the fact that the parties had included a copy of Mr Sabnani's letter in Geocon's bundle of documents and the fact that Geocon had referred to the letter in its statement of claim indicates its agreement under s 32(1)(*k*) that the letter may be given in evidence.[179] I disagree. Geocon referred to the letter in its statement of claim (at paragraph 32) and included it in its bundle of documents only for the purpose of describing Multistar's position on the discount. That reference and inclusion does not signify Geocon's agreement that the letter should be admitted in evidence. Accordingly, s 32(1)(*k*) does not apply.

189 In any event, even if Geocon did give its consent to bearing the discount as a matter of fact, I find that Multistar did not provide any consideration for that consent to be binding as a matter of law. To address the consideration argument, Multistar refers to Clause 1(2) of the Multistar/Geocon subcontract, which states that the parties agree to perform

178 Certified Transcript dated 9 May 2015 at page 104, line 4.

179 Certified Transcript dated 9 May 2015 at page 103, lines 26 to 28 and page 107, lines 25 to 28.

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the contract works on the same terms and conditions as C421 "and such other terms and conditions as the parties shall mutually agree".[180] According to Multistar, the parties have thereby contracted out of the requirement for consideration in order for a variation of the Multistar/Geocon subcontract to be binding.[181] I reject this submission. In my view, Clause 1(2) simply envisages the possibility that the parties may agree *contractually* on additional terms and conditions of the Multistar/Geocon subcontract not currently provided for. Nothing in Clause 1(2) indicates that the parties agreed to dispense with consideration for such future agreement.

190 Because I have found that there was no oral agreement to the discount, there is no need for me to make a finding as to whether Resource Piling's departure indeed caused a delay of more than three months to the works. Multistar's reasons for negotiating a discount and settlement with Sembcorp are irrelevant to the question of whether Geocon agreed to the discount.

(ii) Back charge for amounts paid by Multistar to Resource Piling

191 Multistar submits that it paid a total of $1,148,720.39 to Resource Piling which it has not yet recovered from Geocon.[182] Multistar relies on two documents.[183] The first is a sub-ledger of Geocon bearing the reference IC-M003SG, which Multistar refers to as "Schedule A".[184] The second is a sub-ledger of Geocon bearing the reference SC-R001SG, referred to as "Schedule F".[185] Schedule A shows that Multistar has back charged to Geocon the sum of

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180 1DBD at 44.

181 DCS at paragraph 177.

182 DCS at paragraph 182.

183 DCS at paragraph 182.

184 1DAEIC 137.

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$3,362,565.08.[186] Schedule F indicates that the outstanding progress claims submitted by Resource Piling to Multistar amount to $3,718,165.33 and that Multistar has back charged Resource Piling $1,504,320.64 for certain costs incurred.[187] Multistar subtracts $1,504,320.64 from $3,718,165.33 to arrive at $2,213,844.69. It submits that the difference between $3,362,565.08 and $2,213,844.69, which is $1,148,720.39, represents the amount that Multistar has paid to Resource Piling but has not recovered from Geocon.[188]

192 Geocon disagrees with Multistar's submission. It argues that this back charge of $1,148,720.39 is not valid because Multistar is in effect charging Geocon more than what Resource Piling claimed from Multistar. Geocon submits that the claims under Schedule A and Schedule F should match, but, in any event, its liability to Multistar in respect of Resource Piling's claims would at most be $3,718,165.33, as set out in Schedule F. Thus, at its highest, the amount that Multistar is permitted to back charge to Geocon is $3,718,165.33 - $3,362,565.08 = $355,600.25, which is the difference between the sums in Schedule A and Schedule F.[189]

193 In my view, Multistar's approach is fundamentally flawed. The proposed subtraction of the amount representing the liability of Multistar to Resource Piling ($2,213,844.69) from the sum already back charged by Multistar to Geocon ($3,362,565.08) has no basis in logic.

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185 1DAEIC 258.

186 Lau Wei Koon's AEIC dated 13 January 2014 at paragraph 12.3 and 12.4.

187 Lau Wei Koon's AEIC dated 13 January 2014 at paragraph 12.5 and 12.6.

188 Lau Wei Koon's AEIC dated 13 January 2014 at paragraph 12.7 and 12.8.

189 PCS at paragraphs 234 to 238.

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194 I agree with Geocon's approach. Given that the Geocon/Resource Piling subcontract (administered as a contract directly between Multistar and Resource Piling) and the Multistar/Geocon subcontract are back-to-back contracts, the amounts shown in Schedules A and F should match. The sum of $3,718,165.33 in Schedule F represents the total amount claimed by Resource Piling from Multistar. Accordingly, this is the amount that Multistar is entitled to claim from Geocon. But Schedule A indicates that only $3,362,565.08 has been back charged by Multistar to Geocon. Thus there is a shortfall of $355,600.25. Geocon is liable to pay this amount to Multistar.

195 Assuming (as Multistar asserts) that $1,504,320.64 has been back charged by Multistar to Resource Piling and therefore Multistar is really only liable to Resource Piling for $2,213,844.69, then $1,504,320.64 should also be subtracted from the figure of $3,362,565.08 to reflect the reduced amount that Geocon should pay Multistar. The figure reached after the subtraction is $1,858,244.44. The difference between $2,213,844.69 and $1,858,244.44 is still $355,600.25.

196 Accordingly, I find that Geocon is liable to pay Multistar (and Multistar is entitled to deduct from monies owed to Geocon) only the amount of $355,600.25.

(iii) Back charge by Sembcorp to Multistar for supply of materials

197 Multistar claims that it is entitled to deduct the amount of $1,719,200.11 from amounts owing to Geocon. The sum of $1,719,200.11 consists of $1,679,318.24 as back charges by Sembcorp to Multistar for materials (mainly concrete and rebar) and expenses incurred. The sum of $128,058.07 represents back charges by Multistar to Geocon for certain expenses Multistar incurred (including the rental of concrete pump and

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crawler crane, salary of pump operator and copier charges) pursuant to the Multistar/Geocon subcontract.[190]

198 Geocon raises two objections. First, it suggests that the back charges are not related to Resource Piling's work.[191] Resource Piling left the work site sometime in late April 2004, but these back charges were made between 30 April 2004 and 31 December 2005.[192]

199 Second, Geocon submits that of the back charge by Sembcorp for materials of $1,679,318.24, the sum of $1,597,585.07 has been recorded in the costs of GC 1077. Because Geocon has already incurred this liability, Multistar's attempt to further set off these charges from the sums due to Geocon is double-counting.[193]

200 Although Mr Lau explains that there is no double-counting because Multistar has not been paid, Geocon's position is that the question of who should bear these costs depends on whether the court accepts Mr Tan's evidence that the costs to complete the balance work for GC 1077 was at additional costs to Multistar. Geocon accepts that if the Multistar/Geocon subcontract is on a lump sum basis, then it is liable to pay this amount to Multistar.[194]

201 I have found that there was no variation to the original Multistar/Geocon subcontract, which provides that payment to Geocon for

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190 1DAEIC 12 and 139.

191 PCS at paragraph 239.

192 PCS at paragraph 239.

193 PCS at paragraph 242.

194 PCS at paragraph 243.

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work done is on a lump sum basis (see above at [156] – [170]). Accordingly, Multistar is entitled to recover from Geocon any costs incurred in performing Geocon's work under the Multistar/Geocon subcontract. In the circumstances, I accept that Multistar is entitled to deduct $1,719,200.11 as claimed.

202 I reject both of the objections raised by Geocon. These are back charges related to the bored piling works under the Multistar/Geocon subcontract, which (as I have found) required Geocon to procure completion of the bored piling works, whether by itself or through a sub-sub-subcontractor. Accordingly, it is irrelevant that these costs were accumulated after Resource Piling abandoned the site. Geocon remains liable to Multistar for such costs incurred.

203 There is also no double-counting because GC 1077 reflects Geocon's liability to Multistar. It does not signify that Geocon has actually repaid these amounts to Multistar. GC 1077 is a ledger of liability and not of costs. I observe that this is a position shared by both parties' experts.[195] I find that Geocon has not been able to produce any satisfactory proof of payment. Multistar is thus entitled to set off the amount of $1,719,200.11 from monies owed to Geocon.

(iv) Back charge by Multistar to Geocon for management fees and salaries paid on behalf of Geocon

204 Multistar claims that it is entitled to back charge $1,060,665.91 for management fees and salaries paid on behalf of Geocon. Multistar relies on "Schedule C", which is Geocon's Vendor Sub-ledger IC-M001SG from 31 May 2005 to 31 December 2005. It reflects the expenses and payments made

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[195] Experts' Further Joint List of Issues at page 22, paragraph 4.5.2.

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by Multistar on behalf of Geocon, amounting to $1,126,464.75, less the back charges by Geocon to Multistar for certain expenses amounting to $65,798.84.[196]

205 Out of the sum of $1,060,665.91, Multistar claims that $500,000 represents a loan which Multistar repaid on behalf of Geocon. This loan was given by Mr Tan and Mr Chan to Geocon. Multistar is therefore entitled to recover this sum as a back charge.[197] Multistar relies on two documents: (1) a Multistar Tax Debit Note dated 31 May 2005 for $500,000;[198] and (2) a Multistar payment voucher dated 28 May 2005 for the sum of $360,000 paid to Mr Tan of which $250,000 had the remarks "Interco-Geocon - Amt Owing to Director".[199]

206 In response, Geocon states that Mr Baker has found no supportive native documentation to form the basis of the back charges in Schedule C.[200] There is no evidence that such a loan was made. Further, on the Multistar Tax Debit Note dated 31 May 2005, there is a handwritten remark "check" against the words "Payment to Mr Chan Siew Hoong". This casts doubt on the accuracy of the tax debit note.

207 I find that Multistar has failed to discharge its burden to show that any such loan was ever extended to Geocon. Multistar is unable to produce any primary evidence of the loan. By primary evidence, I mean a loan agreement or an acknowledgment of indebtedness. Geocon refers only to book entries such as Geocon's sub-ledger (*ie*, Schedule C),[201] a tax debit note[202] and a

196 1DAEIC 138.

197 DCS at paragraph 195.

198 2DAEIC 1309.

199 2DAEIC 1310.

200 Experts' Further Joint List of Issues at paragraph 4.5.3 to 4.5.3.7.

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payment voucher made by Multistar to Mr Tan.[203] There is no corresponding payment voucher to Mr Chan. Further, Mr Lau admitted at trial that he did not see any records or documents that can verify that there were indeed loans.[204] Without any primary documentation for the loans, I cannot accept this as a valid deduction.

208 Neither is Multistar able to provide a convincing or consistent explanation for the loan. During cross-examination, Mr Lau suggested that Multistar's payment of $500,000 to Mr Tan and Mr Chan was in respect of a "personal loan, by the directors to Geocon".[205] He admitted that Multistar did not have any records to evidence the loan.[206] Mr Lau suggested also that Multistar "took over the loans" from Geocon, but under further questioning admitted that there was no novation agreement or other legal basis to support this assertion.[207] In its written closing submissions, Multistar submitted that the loan relates to directors' profit sharing and directors' fees, and that since Geocon did not pay this amount to the directors, "hence, [it] became a loan from the directors to [Geocon]".[208]

209 In my view, the lack of evidence for the loan and the inconsistent explanations proffered by Multistar for the loan cumulatively undermine

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201 1DAEIC 138.

202 2DAEIC 1309.

203 2DAEIC 1310.

204 Certified Transcript dated 28 February 2014 at pages 62 to 63.

205 Certified Transcript dated 28 February 2014 at page 62, lines 7 to 8.

206 Certified Transcript dated 28 February 2014 at page 62, lines 20 to 25 and page 63, line 1.

207 Certified Transcript dated 28 February 2014 at page 63, lines 10 to 25.

208 DCS at paragraph 195.

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Multistar's position. I find that Multistar has failed to prove on the balance of probabilities that such a loan was extended by Mr Tan and Mr Chan to Geocon, let alone that Multistar repaid the loan to them on Geocon's behalf.

210 Multistar also submits that out of the sum of $1,060,665.91, it is entitled to back charge to Geocon $581,721 for management fees and salaries. It refers once again to Schedule C, which indicates that Multistar is entitled to $581,721 in management fees and salaries.

211 In response, Geocon argues that there is no justification for any management fees at all.[209] From an email dated 15 April 2005 from Mr Lau to one Vivien Tan, there appeared to be an increase in management fees from $413,000 (previously) to $430,000.[210] This sum also appeared to increase to $581,721 as seen from Multistar's schedule of inter-company accounts dated 31 October 2005.[211] Geocon submits that there is no justification for any increase in management fees.[212] When asked why there was an increase in management fees, Mr Lau replied that the management fee was based on a percentage of the revenue of Geocon and that there was an increase because the "turnover or revenue of Geocon … increased from 2004 to 2005".[213] But in fact, Geocon's Profit and Loss Account for the year ended 31 December 2005 indicates that the revenue of Geocon decreased from 2004 to 2005.[214] The turnover fell 58.5%.[215] Mr Lau admitted at trial that he has not seen any

209 PCS at paragraph 252.

210 Certified Transcript dated 28 February 2014 at page 55.

211 Certified Transcript dated 28 February 2014 at page 56; 2DAEIC 1303.

212 PCS at paragraph 252.

213 Certified Transcript dated 28 February 2014 at page 57.

214 1AB 536.

215 PCS at paragraph 251.

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agreement in relation to the management fees and that it was merely a "verbal agreement".[216]

212 In support of its claim, Multistar refers[217] only to book entries such as Geocon's sub-ledger[218] and a schedule of inter-company accounts.[219] I agree with the observation made in Geocon's submissions[220] that no management service agreement or any supporting documentation has been produced by Multistar to evidence its entitlement to the management fees, let alone any increase in these fees. I find that Multistar has not discharged its burden of proof on this aspect of its claim. It has completely failed to adduce any primary evidence to support the claim.

213 For these reasons, I reject Multistar's back charge for management fees and salaries.

(v) Loan by Multistar to Geocon

214 Multistar claims that it has loaned a total of $995,000 to Geocon, with Geocon having repaid $641,002.45. As such, there remains a sum of $353,977.55 outstanding. Multistar relies on Schedule D, which is Geocon's General Ledger for its inter-company account with Multistar (Account Code 28700) as at 31 December 2005.[221] Multistar also relies on a series of payment

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216 Certified Transcript dated 28 February 2014 at page 58.

217 Defendant's revised closing submissions dated 17 February 2016 at paragraph 194.

218 2DAEIC at 1303.

219 2DAEIC at 1334.

220 Plaintiff's closing submissions dated 17 February 2016 at paragraph 253.

221 Lau Wei Koon's AEIC dated 13 January 2014 at paragraph 12.14-12.16 and page 140.

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vouchers from Multistar that indicate Geocon as the payee and bear dates and sums that match those in Schedule D.[222]

215 Geocon argues that there are no loan documents or supporting documents evidencing the loans from Multistar to Geocon in 2004 or 2005.[223] At best, there are a few payment vouchers purportedly showing transactions between the parties.[224] Geocon's audited statements for the years ended 31 December 2004 and 2005 also make no reference to such loans.[225]

216 I find that there is sufficient documentary evidence to prove on the balance of probabilities that such a loan was extended to Geocon. The payment vouchers corroborate Geocon's general ledger and present a consistent and complete picture of the loans owed by Geocon to Multistar. Accordingly, I accept that Multistar is entitled to set off the sum of $353,977.55.

(vi) Loan by Multistar to Multi-Con Machinery Pte Ltd on behalf of Geocon

217 Multistar submits that it repaid a loan of $634,377.06 that Geocon received from Multi-Con Machinery Pte Ltd ("Multi-Con Machinery"), which is a company related to Multistar and Geocon and which has the same directors.[226] Multistar therefore seeks to recover this amount via a back charge to Geocon.

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222 2DAEIC 1344 to 1349; DCS at paragraph 188.

223 PCS at paragraph 257.

224 PCS at paragraph 257.

225 PCS at paragraph 258; 1AB 559.

226 PCS at paragraph 262.

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218 Multistar refers to "Schedule E", which is Geocon's General Ledger for its inter-company account with Multi-Con Machinery Pte Ltd (Account Code 28700) as at 31 December 2005. The ledger indicates that Geocon received a loan of $325,000 from Multi-Con Machinery. Multistar also refers to Multi-Con Machinery's Customer Sub-ledger ID-G001SG, which shows that $309,377.05 was due from Geocon to Multi-Con Machinery as at 31 December 2005.[227] The total sum of $634,377.06 is derived by adding the amount of $325,000 to that of $309,377.06.

219 Geocon submits that there is no documentation of any loan between Multi-Con Machinery and Geocon.[228] In the Experts' Further Joint List of Issues at paragraph 4.5.5, Mr Baker states that this amount is not entered into GC 1077. Multistar's response is that Mr Baker did not deny that this amount was taken into Geocon's Audited Accounts.[229]

220 Geocon submits that more importantly, this amount clearly relates to debts between Multi-Con Machinery and Geocon, and has nothing to do with Multistar. There was no written agreement, assignment, novation, or any other evidence that Muti-Con Machinery, Geocon and Multistar agreed to have these debts resolved in such a manner.[230]

221 I find that there is no basis for Multistar to claim to be entitled to set off a debt due from Geocon to Multi-Con Machinery against the debt due from Multistar to Geocon. There is no evidence that Geocon, Multistar, and Multi-

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227 DCS at paragraph 190; 1DAEIC 143.

228 PCS at paragraph 266.

229 DCS at paragraph 191.

230 PCS at paragraph 266.

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Con Machinery had agreed to a triangular set-off of this nature. Multistar points to a general journal entry of Geocon dated 31 December 2005 where it is stated that Geocon received an inter-company loan from Multistar in the amount of $634,377.06, with the narration "BEING REV AMT OWING BY MULTI-CON SYSTEMS OFFSET AGAINST AMT OWING TO MULTI-CON MACHINERY". This book entry is insufficient in itself to satisfy me on the balance of probabilities that there was any agreement between all three parties that Geocon's debts to Multi-Con Machinery should be set off in this manner.

222 During cross-examination, Mr Lau once again suggested that Multistar "took over the debt" owed by Geocon to Multi-Con Machinery.[231] But he conceded upon questioning that there was no novation agreement or indeed any other agreement or mechanism between the parties indicating the parties' consent to this arrangement.[232] Multistar was also unable to point to any evidence that it had paid the debt to Multi-Con Machinery on behalf of Geocon. At trial, Mr Lau also admitted that he had not seen any proof of payment of the sum of $634,377.05 from Multistar to Multi-Con Machinery.

223 In the circumstances, I find that Multistar is not entitled to offset this amount from its debt to Geocon.

Multistar's liability and quantum

224 Given my findings above, I find that Multistar is liable to pay Geocon the sum of $4,343,569.35. It is calculated as follows:

Original Multistar/Geocon subcontract	$26,000,000.00

[231] Certified Transcript dated 28 February 2014 at page 37, line 24.

[232] Certified Transcript dated 28 February 2014 at page 38, lines 9 to 11.

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Add: variation orders	$3,164,118.98
Less: discount for settlement between Multistar and Sembcorp	Rejected
Less: amount paid by Multistar (as reflected in invoice dated 5 October 2004)	$22,391,771.72
Less: back charge by Multistar to Geocon for progress claims by Resource Piling	$355,600.25
Less: back charge by Sembcorp to Multistar for supply of materials	$1,719,200.11
Less: back charge by Multistar to Geocon for management fees and salaries paid on behalf of Geocon	Rejected
Less: loan by Multistar to Geocon	$353,977.55
Less: loan by Multistar to Multi-Con Machinery Pte Ltd on behalf of Geocon	Rejected
Balance due	**$4,343,569.35**

The counterclaim

225 Multistar's counterclaim is raised in three alternatives: the sums of $154,580.25, $865,773.90, or $658,688.92. I reject all three permutations of Multistar's counterclaim.

226 I reject Multistar's counterclaim for $154,580.25 because of the position I have reached with respect to the value of the variation orders, discount, progress payments, back charges, and loans, as seen above at [224]. I therefore also reject Multistar's counterclaim for $865,773.90, which builds upon the sum of $154,580.25.

227 The counterclaim for $865,773.90 and $658,688.92 are also without merit because Multistar failed to satisfy its burden of proving that $711,193.65 was indeed incurred as costs pursuant to C421. As mentioned previously, the sum of $711,193.65 is a significant component of Multistar's alternative counterclaims of $865,773.90 and $658,688.92.

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228 I begin with an observation that the experts of both parties share the opinion that the documentary evidence provided by Multistar provides minimal explanation for its various claims. Mr Ness, Multistar's own expert, agrees that "in the main, the documentation only comprises a ledger extract with no ability to understand the work/service, when it was done, or how it relates to Geocon's work".[233] He also takes the view that "[f]or those claims where further documentation exists (mainly concrete, plant and rebar) the additional evidence shows late backcharges by Sembcorp against [Multistar] but the reason for the work is also not stated/explained",[234] and that "[t]here is little evidence as to what specific parts of the bored pile works Geocon did not complete apart from some outstanding pile-hacking".[235]

229 While these are not properly matters for the experts to give evidence on, the experts' observations mirror my own findings. Needless to say, the burden of proving the counterclaim falls squarely on Multistar. In my view, Multistar has utterly failed to discharge its burden. The counterclaim suffers from a serious dearth of supporting evidence. Multistar cannot possibly hope to succeed in its counterclaim with proof of this nature.

230 I start with the claim for $70,000 in relation to soil disposal. I note that the quotation from Huationg is not the same quotation that Multistar refers to in its letter dated 24 September 2006. The reference numbers differ (HTC/Ctr/ys/C:00493/06 and HTC/Ctr/ys/C:00502(R)/06). Accordingly, Multistar has not referred me to any relevant correspondence between

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233 Experts' Further Joint List of Issues at page 32, paragraph 4.6(5).

234 Experts' Further Joint List of Issues at page 32, paragraph 4.6(6).

235 Experts' Further Joint List of Issues at page 38, paragraph 5(2).

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Sembcorp and Multistar showing that Multistar requested and Sembcorp agreed to pay the amount of $70,000 as claimed.

231 With respect to Multistar's counterclaim of $138,898 for the costs of concrete, Mr Baker observes that some of the the concrete referred to in the two deduction forms and tax invoice is not the appropriate concrete for bored piling, which requires a certain mix of concrete.[236] Under cross-examination, Mr Ness likewise agreed that some of the concrete identified in these documents is not meant for bored piling.[237] Beyond these items, Multistar has not adduced any primary documents such as delivery orders or invoices from concrete suppliers. I therefore cannot find that on a balance of probabilities the concrete indicated in the Sembcorp deduction forms and tax invoice was concrete used for the bored piling works, given the experts' views that the concrete was largely inappropriate for this purpose. In the absence of further evidence, I reject this component of the counterclaim.

232 Multistar also seeks $205,871.51 for back charges from Sembcorp in relation to reinforcement bars. It relies on a deduction form and an appendix to an invoice advice from Sembcorp. The appendix to the invoice advice states "Payment on behalf (assume for rebar)" in respect of a sum of $107,063.20, which Multistar claims as part of the total amount of $205,871.51. Notwithstanding the dubious reference "(assume for rebar)" in the appendix to the invoice advice, I find that the overall lack of primary evidence is again fatal to Multistar's claim.

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236 Experts' Further Joint List of Issues at page 35.

237 Certified Transcript dated 1 September 2014 at page 91, lines 3 to 8.

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233 I reject the remaining components of the counterclaim on the basis that Multistar has failed to provide sufficient evidence to discharge its burden of proof. Multistar was unable to establish what these costs were incurred for. Nor could it satisfy the court that these cost components were indeed incurred under C421. The mere fact that these cost components were itemised in Multistar's Job Detail Report is insufficient.

Conclusion

234 In light of the above findings, and after doing the necessary arithmetic, I have found that Multistar is liable to pay Geocon the sum of $4,343,569.35.

Vinodh Coomaraswamy
Judge

Leo Cheng Suan and Teh Ee-Von (Infinitus Law Corporation) for the plaintiff in Suit No 65 of 2011 and the defendant in Suit No 500 of 2011; Govindarajalu Asokan (instructed) (Govind Law Corporation) and Shehzhadee binte Abdul Rahman (Gabriel Law Corporation) for the defendant in Suit No 65 of 2011 and the plaintiff in Suit No 500 of 2011.

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